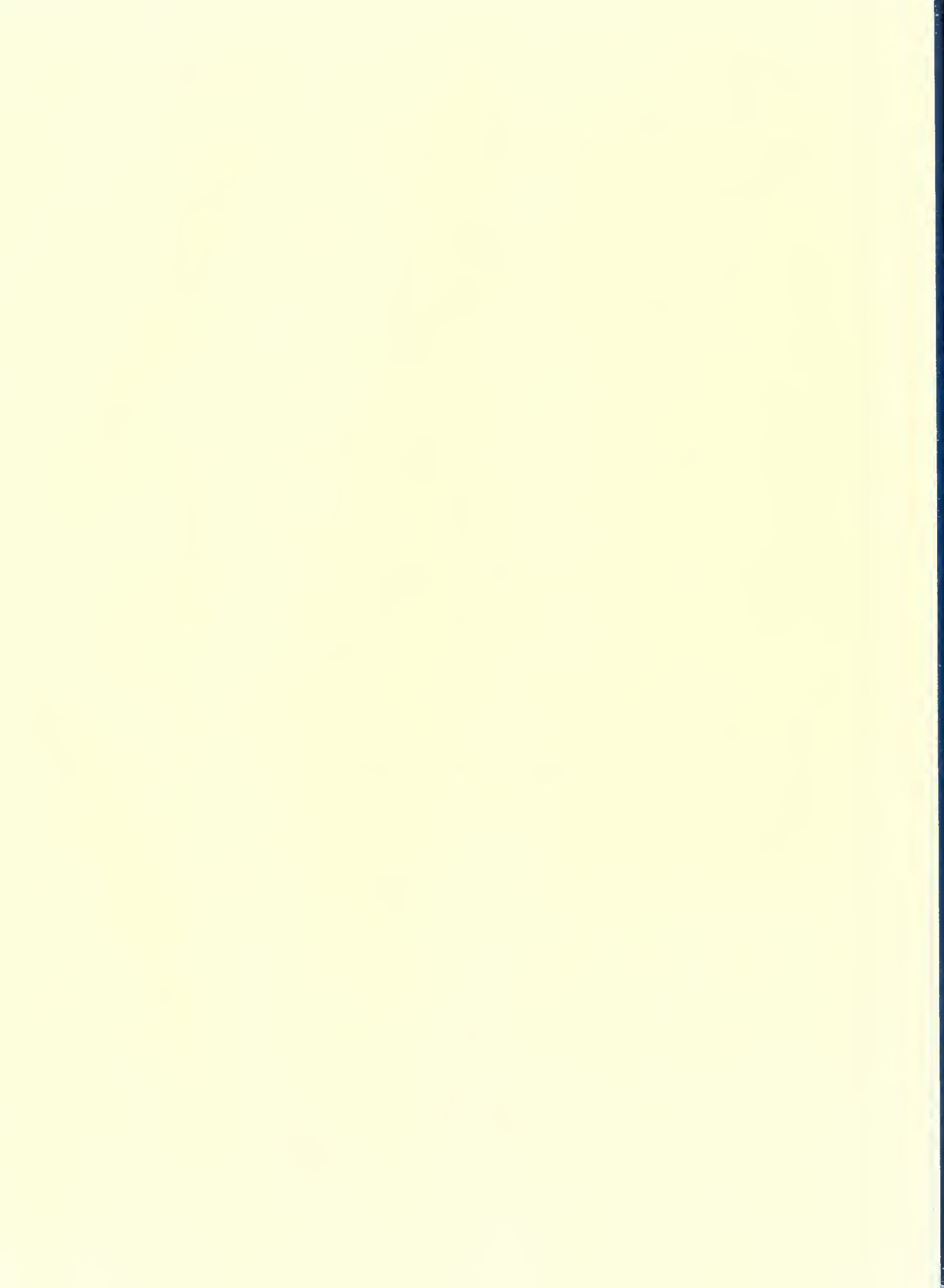


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Regional Oral History Office
The Bancroft Library

University of California
Berkeley, California

Government History Documentation Project
Ronald Reagan Gubernatorial Era

Howard K. Way

ISSUES IN CORRECTIONS: THE ADULT AUTHORITY,
DETERMINATE SENTENCING, AND PRISON CROWDING, 1962-1982

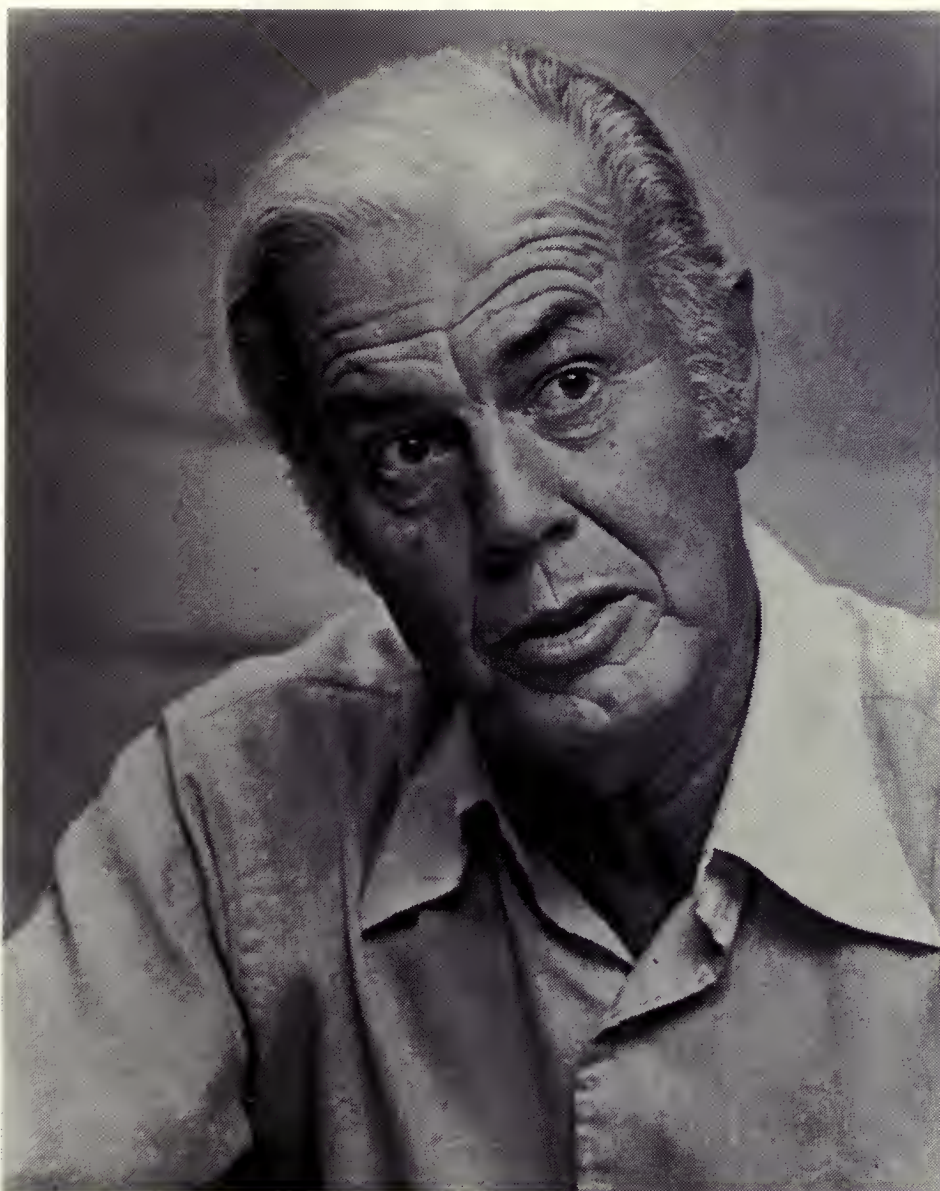
An Interview Conducted by
Julie Shearer
in 1984

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HOWARD WAY
1976

TABLE OF CONTENTS -- Howard K. Way

PREFACE	1
BRIEF BIOGRAPHY	iii
INTERVIEW HISTORY	iv
I BACKGROUND	1
II SENATE CAREER	4
Early Dealings with the Adult Authority	7
Serving as Senate President pro Tempore	12
Medi-Cal Legislation in the 1960s	16
III THE RONALD REAGAN YEARS	22
Penal Reform Legislation in the 1970s	22
Governor's Select Committee on Law Enforcement	24
Reorganization of Correctional Services	25
Views on the Death Penalty	26
IV THE EDMUND G. BROWN, JUNIOR, ADMINISTRATION	29
Determinate Sentencing Act of 1976--SB 42	29
Prison Crowding	32
Erosion of Judicial Discretion	34
Heading the Adult Authority and the Youth and Adult Correctional Agency	37
Corruption in Prisons	39
Thoughts on Reform	40
More on Determinate Sentencing	44
Effect of Population Age on Crime Rate	45
Members of the Community Release Board	47
Prison Construction	50
Controversy over Replacing Jerry Enomoto	52
Appointing Ruth Rushen as Director of Corrections	55
Reconsidering the Determinate Sentence	58
Controversial Cases before the Adult Authority	59
Recollections of Governor Brown	61
TAPE GUIDE	65
INDEX	66

PREFACE

California government and politics from 1966 through 1974 are the focus of the Reagan Gubernatorial Era Series of the state Government History Documentation Project, conducted by the Regional Oral History Office of The Bancroft Library with the participation of the oral history programs at the Davis and Los Angeles campuses of the University of California, Claremont Graduate School, and California State University at Fullerton. This series of interviews carries forward studies of significant issues and processes in public administration begun by the Regional Oral History Office in 1969. In previous series, interviews with over 220 legislators, elected and appointed officials, and others active in public life during the governorships of Earl Warren, Goodwin Knight, and Edmund Brown, Sr., were completed and are now available to scholars.

The first unit in the Government History Documentation Project, the Earl Warren Series, produced interviews with Warren himself and others centered on key developments in politics and government administration at the state and county level, innovations in criminal justice, public health, and social welfare from 1925-1953. Interviews in the Knight-Brown Era continued the earlier inquiries into the nature of the governor's office and its relations with executive departments and the legislature, and explored the rapid social and economic changes in the years 1953-1966, as well as preserving Brown's own account of his extensive political career. Among the issues documented were the rise and fall of the Democratic party; establishment of the California Water Plan; election law changes, reapportionment and new political techniques; education and various social programs.

During Ronald Reagan's years as governor, important changes became evident in California government and politics. His administration marked an end to the progressive period which had provided the determining outlines of government organization and political strategy since 1910 and the beginning of a period of limits in state policy and programs, the extent of which is not yet clear. Interviews in this series deal with the efforts of the administration to increase government efficiency and economy and with organizational innovations designed to expand the management capability of the governor's office, as well as critical aspects of state health, education, welfare, conservation, and criminal justice programs. Legislative and executive department narrators provide their perspectives on these efforts and their impact on the continuing process of legislative and elective politics.

Work began on the Reagan Gubernatorial Era Series in 1979. Planning and research for this phase of the project were augmented by participation of other oral history programs with experience in public affairs. Additional advisors were selected to provide relevant background for identifying persons to be interviewed and understanding of issues to be documented. Project research files, developed by the Regional Oral History Office staff to provide a systematic background for questions, were updated to add personal, topical, and chronological data for the Reagan period to the existing base of information for 1925 through 1966, and to supplement research by participating programs as needed. Valuable, continuing assistance in preparing for interviews was provided by the Hoover Institution at Stanford University, which houses the Ronald Reagan Papers, and by the State Archives in Sacramento.

An effort was made to select a range of interviewees that would reflect the increase in government responsibilities and that would represent diverse points of view. In general, participating programs were contracted to conduct interviews on topics with which they have particular expertise, with persons presently located nearby. Each interview is identified as to the originating institution. Most interviewees have been queried on a limited number of topics with which they were personally connected; a few narrators with unusual breadth of experience have been asked to discuss a multiplicity of subjects. When possible, the interviews have traced the course of specific issues leading up to and resulting from events during the Reagan administration in order to develop a sense of the continuity and interrelationships that are a significant aspect of the government process.

Throughout Reagan's years as governor, there was considerable interest and speculation concerning his potential for the presidency; by the time interviewing for this project began in late 1980, he was indeed president. Project interviewers have attempted, where appropriate, to retrieve recollections of that contemporary concern as it operated in the governor's office. The intent of the present interviews, however, is to document the course of California government from 1967 to 1974, and Reagan's impact on it. While many interviewees frame their narratives of the Sacramento years in relation to goals and performance of Reagan's national administration, their comments often clarify aspects of the gubernatorial period that were not clear at the time. Like other historical documentation, these oral histories do not in themselves provide the complete record of the past. It is hoped that they offer firsthand experience of passions and personalities that have influenced significant events past and present.

The Reagan Gubernatorial Era Series was begun with funding from the California legislature via the office of the Secretary of State and continued through the generosity of various individual donors. Several memoirs have been funded in part by the California Women in Politics Project under a grant from the National Endowment for the Humanities, including a matching grant from the Rockefeller Foundation; by the Sierra Club Project also under a NEH grant; and by the privately funded Bay Area State and Regional Planning Project. This joint funding has enabled staff working with narrators and topics related to several projects to expand the scope and thoroughness of each individual interview involved by careful coordination of their work.

The Regional Oral History Office was established to tape record autobiographical interviews with persons significant in the history of California and the West. The Office is under the administrative direction of James D. Hart, Director of the Bancroft Library, and Willa Baum, head of the Office. Copies of all interviews in the series are available for research use in The Bancroft Library, UCLA Department of Special Collections, and the State Archives in Sacramento. Selected interviews are also available at other manuscript depositories.

July 1982
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley

Gabrielle Morris
Project Director

On behalf of future scholars, the Regional Oral History Office wishes to thank those who have responded to the Office's request for funds to continue documentation of Ronald Reagan's years as governor of California. Donors to the project are listed below.

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*Deceased during the term of the project

BIOGRAPHICAL INFORMATION

(Please print or write clearly)

Your full name Harold K. Way

Date of birth 5-13-1913 Place of birth Port Orchard, Wn.

Father's full name Haven M. Way

Birthplace NEBRASKA

Occupation FARMER

Mother's full name FLORENCE ELMA SMITH

Birthplace ILLINOIS

Occupation HOUSEWIFE

Where did you grow up? EXETER, CA.

Present community SACRAMENTO, CA.

Education B.S. UNIV. OF CALIF.

Occupation(s) FARMER, LEGISLATOR, CH. PAROLE
BOARD, CALIFORNIA - STATE YOUTH & ADULT CORRECTIONAL
AGENCY, STATE OF CALIF.

Special interests or activities TENNIS, SKIING, HIKING

INTERVIEW HISTORY

In the world of politics, where labels are readily applied and often relied upon to predict political behavior, Republican State Senator Howard Way has defied categorization. He has been labeled variously "parson senator," a fiscal conservative, a "bleeding heart," a death penalty advocate, and prison reformist. During his twenty years in state government, which span the gubernatorial terms of Edmund G. Brown, Senior; Ronald Reagan; and Edmund G. Brown, Junior, he has been all these things and more.

Elected to the senate in 1962, Way established a reputation for fiscal conservatism in 1965 by opposing the initial Medi-Cal legislation. His opposition was not directed at the program's goals, he explained. Rather it was that he thought that "we ought to have started with a Chevrolet and not a Cadillac."

Through the efforts of a coalition of Democratic senators (many former assemblymen) and moderate Republicans, Way unseated conservative Democrat Hugh Burns as president pro tem of the senate in May of 1969. During a "brief Camelot" of nine months, Way and his supporters reformed the practices of the senate committees that had been meeting at Posey's to decide the vote in advance of committee hearings. Thereafter, roll call votes were substituted.

As befitting a representative of agriculturally based Tulare County, Way became a member of the Senate Committee on Agriculture and, in 1971, its chairman. In 1972 he chaired the combined agriculture and water committees. It was in the field of corrections, however, where Way became a leading advocate for the determinate sentence and something of a lightning rod in the controversy over sentencing and parole practices and prison crowding--issues that festered throughout Ronald Reagan's years as governor and beyond. Discussion of these issues form a major part of the interviews which follow.

Way first addressed prison issues when, responding to constituent complaints, he investigated the sentencing practices of the California Adult Authority and challenged the board's decision making as "rigid" and "unjust" in determining readiness for parole and release. His pursuit of parole for constituents who met the board's criteria won him the designation "parson senator."

Over the years, Way consistently worked for the determinate prison sentence, to eliminate the frustration of an uncertain release date (in some cases ranging from five years to life) and avoid what he considered abuses of discretion by the Adult Authority.

His efforts (along with those of Senator John Nejedly) culminated in the Determinate Sentencing Act of 1976. This reform measure replaced the indeterminate sentence, which was itself introduced as a humane reform in the forties to tailor the punishment to fit the crime and to monitor the inmate's progress toward rehabilitation.

Way retired from the senate in 1975; he did not retire from public life nor from political controversy. In 1976 he accepted appointment from Governor Edmund G. Brown, Junior, as chairman of the Adult Authority, against whose parole practices he had waged earlier battle. As chairman, he opposed what he considered attempts by Governor Brown to influence AA board members. He also squared off against Department of Corrections Director Ray Procunier on the issue of determinate sentencing.

In 1980 Way was named by Governor Brown, Junior, as secretary of the Youth and Adult Corrections Agency (YACA), whereupon Way named Ruth Rushen, a black woman, to head the Department of Corrections. The senator observed shrewdly that conservatives are often better able to institute liberal reforms because they "won't be so likely to be accused of being soft on crime."

Way has not backed away from questioning his own strongly held views. Following his most recent "retirement" from YACA in 1982, he has been mulling over whether the determinate sentence has not become too rigid, with amendments that lock both judges and inmates into a system of long prison sentences that lead inevitably to overcrowding.

Two interviews were conducted with the senator in his comfortable home in suburban Sacramento. The first, which constitutes the major part of the transcript, was on March 22, 1984. Discussion covered Senator Way's career during the years of Ronald Reagan's governorship (1966 to 1974). The second, much briefer, interview focusing on the period 1974 to 1982, was conducted on November 13, 1984.

Over the succeeding 15 months, the transcripts were lightly edited and reviewed by the senator, who added helpful comments and clarifications. The transcripts were then final typed, indexed, printed and bound for research use.

Julie Shearer
Interviewer-Editor

April 1986
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley

I BACKGROUND

[Interview 1: March 22, 1984]##

Shearer: I'm going to ask questions, but if you have anything you'd like to either encourage us to focus on right now or suggest that we skip over lightly, I might just make a note of that.

Way: Now, you know the Adult Authority became in pretty rapid succession the Community Release Board and then the Board of Prison Terms. Now, when you ask about the Adult Authority, do you just want to ask about the body before it was the Community Release Board and before it was the Board of Prison Terms?

Shearer: Yes, we're interested in what you recall of it during your years in the senate observing and creating legislation directed toward prison reform, and then later during your term of membership on the board.

Way: All right.

[interruption]

Way: In all the years that I was in state government, I've never gone off the record and I'm never concerned about what I say. I'm completely open.

Shearer: I'll give you an easy question first--when were you born?

##This symbol indicates that a tape or a segment of a tape has begun or ended. For a guide to the tapes see page 65.

Way: I was born May 13, 1913.

Shearer: Was this in California?

Way: No, this was in the state of Washington in the little town of Port Orchard, which is near Seattle. Quaint little town.

Shearer: And are you an only child?

Way: No. I have an older brother and a younger sister.

Shearer: What are their names?

Way: The older brother--he has passed away--was Haven Maxwell Way. My younger sister is still living in southern California, and she is Eleanor Blosser. [spells name] She's a widow. My parents were Haven and Florence Way.

Shearer: When did your family come to Exeter?

Way: Nineteen twenty-five.

Shearer: Did they come in order to farm?

Way: Yes. Let's see, we left Port Orchard, Washington, when I was about two, and moved to a little town in northern Indiana, Wawaka, where my father had a general store. This was a very small town. I spent nine years of my early childhood in that little town in Indiana. And then in 1925 at the age of twelve, I came to Exeter. My father went into farming. And I spent the rest of my life there, until--well, now we sort of regard ourselves as residents of Sacramento after having been here some twenty years.

Shearer: What kind of farming operation did your father have?

Way: Fruit, deciduous fruit. Largely table grapes. Then after World War II, I got into the same business.

Shearer: I see. And then you took your degree at UC in agricultural--?

Way: Agricultural economics.

Shearer: So your idea at that time was to come back and put that degree to work.

Way: Oh, sure, that's what I did.

Shearer: You were there from 1936 to '63, with time out for--

Way: For World War II.

Shearer: And of course your marriage to Barbara Chandler in 1940.

Way: Right.

Shearer: You have two children?

Way: Yes. Susan and Stephen. They're both in the Tacoma area.

Shearer: Oh, they went back to Washington.

Way: Yes.

Shearer: I've been looking over some of the things that were listed in your biography in the Handbook.* I guess you served on the Board of Education, and I have "MOD" listed here. I can't think what that stands for now.

Way: March of Dimes.

Shearer: Oh yes, that's right--Boy Scouts, Kiwanis, and so forth.

*Handbook California Legislature 1963, Regular Session.

II SENATE CAREER

Shearer: What was it that launched you into politics?

Way: I had always been interested in politics. One of my first political appointments was by Governor Earl Warren. I was appointed to the Tulare County Fair Board. That goes back quite a ways. Just in passing, I thought it was interesting that even with that small, little appointment, way down at that level, I had a personal call from Governor Warren telling me, "I am appointing you to the Tulare County Fair Board." Governors now can't do that.

Shearer: Isn't that something! When was that?

Way: This had to be in the early 50s, probably about '52 or '53, along in there. Then I was reappointed by Governor Knight, so I served on that fair board for a good many years. In the meantime, I was on the school board in our old Exeter Union High School District. And I was county chairman for Senator Tom Kuchel. I had this long, abiding interest in politics.

Shearer: Had your family, your father or mother, participated in public activity?

Way: No. Except that they were always interested.

Shearer: They paid attention?

Way: Yes, they paid attention, and there was a lot of conversation in the home, of course, always about government and public officials. My father, incidentally, was a Democrat, and my mother was a Republican. So there were lots of interesting discussions. [laughs]

Shearer: Oh, yes!

So you ran for senator in 1962.

Way: In 1962.

Shearer: And got elected and served from '63 until--

Way: Sixty-three to seventy-six. So I ran four times. I ran in '62, and again in '66 in a greatly enlarged district because of reapportionment--originally I just represented Tulare County, but I ended up representing seven counties from '66 on. It was the largest district geographically in the state of California.

Shearer: Was that a tough race?

Way: It was tough. I ran against one of my colleagues, of course, in '66, Senator Jim Cobey, from Merced, who was a veteran senator and a Democrat. That was probably my toughest, yes, because I had to get acquainted in a much larger area. Then I had to run again because when we reapportioned in 1966, to get staggered terms again, half of us had to run again in just two years. The odd-numbered districts ran again in '68. So in '66 I ran against Senator Cobey, and in '68 I ran against Chuck [John] Erecca, who had been director of public works under Governor Pat Brown. That was a tough race.

Shearer: I don't know the spelling of that name.

Way: It's tough: E-r-e-c-c-a. He was of Basque origin, from Los Banos.

Then I ran again in '72--that was my last campaign--against a rather unknown--I think he was a supervisor from Mariposa County. I think his name was Herbert Davis.

Shearer: What made you choose 1962? Was there an issue--?

Way: Yes--well, my predecessor, who was Senator Howard Williams--he was a sixteen-year senator who had died in office. And in less than six weeks before the primary. So his name had to appear on the ballot by law. And so after the primary, then, the Republican Central Committee in Tulare County began casting around for a candidate to run in the general [election]. And they wanted me to run. It was a tough decision. It really was. Barbara was not at all interested. [laughter] But, I have to admit, I was interested. Because of this long-time interest in politics. And so we finally decided to run, and we were elected.

Shearer: We decided to run and we were elected?

Way: We--Barbara has always been very--we've been a team.

Shearer: How has she participated in your campaigns?

Way: Well, just with me, largely. And very supportive. And of course, once we got to Sacramento, she enjoyed it. It meant a complete change in our life, of course; it has expanded our horizons tremendously, I would say.

Shearer: I notice you were on the Agriculture Committee almost--

Way: Right away. All the time.

Shearer: All the time except for--

Way: When I was pro tem.

Shearer: --in 1970, and your successor, didn't he try to bump you off?

Way: Well, no, it took a little while to get--because the committees were set, as I recall.* There was a short time there when I wasn't on it, but by '71 I was chairman, wasn't I, I think?

Shearer: Yes.

Way: Then we combined it with the Water Committee in 1972, and I chaired that.

Shearer: That's right, and you continued with a strong interest in agriculture.

Way: Oh yes, I was regarded as the farmer senator.

Shearer: Did your constituents also regard you that way?

Way: Oh yes. I carried key agriculture bills.

Shearer: Do you want to mention a few of those?

Way: I'm not particularly proud of those. Milk pooling--

*Jack Schrade succeeded Howard Way as president pro tem in February of 1970, after the committee chairmanships had been set.

Shearer: Oh yes!

Way: Oh, I carried that bill and made multimillionaires out of some southern California dairy men. [laughter] Oh, and I carried bills for the citrus industry that allowed the grower to pull diseased trees and be paid for his diseased trees--that sort of thing. So I think it would be safe to say in the interest of brevity that any key agricultural bills usually fell in my lap.

Early Dealings with the Adult Authority

Shearer: I see.

Being as interested as you were and are in agriculture, how is it that your sights began to shift to the field of corrections and prison reform?

Way: Well, it was probably my interest at first because of constituent problems with prisoners or parolees. I'll use just one story that sort of graphically illustrates it, and it will perhaps lead into why I was unhappy with the old Adult Authority and why I really spurred a determinate sentencing approach to sentencing prisoners.

I was contacted by a constituent in my district who had a son who was incarcerated at DVI, Deuel Vocational Institute, near Tracy. This man had done some sixteen years in prison. He was forty-two at the time, so he went in at a very young age, and he had a very tough record--armed robbery, release and then a second offense, and maybe a third offense. But he had had years of exemplary behavior in prison and in the meantime had become an expert artificial inseminator on the dairy at DVI. (We run a pretty good-sized dairy there.)

We had a job for him on a dairy in my district. He was willing to go there. As part of the parole provisions, he would spend the nights in the Turlock jail if they wanted him to. But this job would have paid him [what] at the time was the fantastic salary of \$750 a month, and they wanted him. But the parole board would not parole him. So I just wouldn't quit on that one. I just stayed with it and stayed with it. Finally I got him paroled. And to make this story very brief, today as a free man, he runs the dairy at DVI.

Way: I saw the injustice of this thing, that this board was so rigid. And yet they determined how long people stayed in prison. So that whetted my interest. There were several other incidents like that, where I really interfered. And, of course, this did not sit well at all with the board--to have a questioning legislator.

Shearer: When was this?

Way: It was before I was senate president pro tem, so it was probably late 60s.

Shearer: About 1968?

Way: Yes, along in there.

Shearer: Who was sitting on the Adult Authority then? Do you recall?

Way: It was chaired then by Henry Kerr probably.

Shearer: My information says it was 1970.

Way: Then it could have been early 70s. Henry Kerr was chairman. Of course, the person who was controlling the board 100 percent was Joe Spangler, who was the executive [secretary]--

Shearer: Really?

Way: Oh sure. He was the administrative officer, and he'd been there for years and years. There was just ample evidence that he decided who was going to be paroled and who wasn't, really. He was a very strong person.

Shearer: Was he a corrections officer?

Way: No. He was the administrative officer of the board, and he'd been there for years.

Shearer: I see. But he wasn't a former policeman, at least as far as you know.

Way: I don't know what his background was. Joe Spangler. Everybody that had anything to do with corrections in those days knew Joe Spangler. He was a very, very tough law-and-order, lock-'em-up-and-throw-the-key-away type.

Shearer: So you feel at least at the point when you became interested, he was a major force on the board.

Way: Right.

Shearer: Did he continue to exert that degree of influence?

Way: Not after Ray Procunier was named chairman of the Adult Authority. Now when was that?

Shearer: He came in in 1967, so--

Way: Procunier was director of Corrections at that time. In 1974 Governor Jerry Brown decided to name him chairman of the Adult Authority. He was not confirmed as chairman of the Adult Authority in the senate. We had a big battle.

Shearer: Even without confirmation he managed to serve a year somehow in that capacity. But I think earlier, when he first came in, he came in about '67.

Way: As director of Corrections. Right.

Shearer: Did he sit immediately? I think he would have sat immediately with the Adult Authority, would he not?

Way: Yes, I think he did. Absent confirmation. You can serve a certain length of time without confirmation.

Shearer: That's right.

Way: The way we lead into this is, one of the first things Procunier did when he went to the Adult Authority was to fire Joe Spangler. Bingo! Very interesting.

Shearer: Very interesting!

Way: He knew that I was not a strong Spangler supporter, so one of the first calls he made was to me as a senator to say, "Senator, I want to make your day. I just fired Joe Spangler." About three hours later I got a call back from Mr. Procunier, who said, "Hey, Senator, I just found out I didn't have the authority to fire Joe Spangler. I have to get five votes from the nine-member Adult Authority. But," he said, "I'll get 'em." [laughter] This is Procunier. So he did.

And then Mr. Spangler became an investigator for the Adult Authority. We have an investigative staff that investigates parolees who are being considered for parole and does a lot of other things.

Shearer: Was that kind of a retirement package for him?

Way: A little bit, yes. His investigative experience was limited, at least. We better stop on Spangler there, because he enters the plot later.

Shearer: All right.

[tape interruption]

Shearer: You were asking about the advisability of discussing personalities, and I think our interest is in getting as full an account as possible and if, on review of the transcript, it seems unnecessary--

Way: You can take it out.

Shearer: Yes, we can always take it out. We always encourage people to speak freely and fully.

Way: I've always felt that personalities and personal relationships play such an important part in tremendous decisions, really, and I think really from an historical standpoint that it's sort of important to know of the personality of this man Spangler. You know, he was a very dedicated public servant, but he was tough.

Shearer: Did he continue to exert influence?

Way: Not after that, no.

Shearer: If he did have a say in determining readiness for parole--

Way: I had direct evidence of that from penciled and written notations on forms and so on, when I began to really investigate why some of these people who by every yardstick that I could see for measurement--of performance in prison, job opportunity on the outside, family support on the outside--why they weren't paroled after serving lengthy terms. And it was largely because of Spangler.

Shearer: How did these examples come to your attention?

Way: From constituents--relatives, father, mother. And, of course, then I suppose I found out later when I got over there as chairman of the Board of Prison Terms, that I was known as the bleeding heart. Some people even called me the "parson senator" because I was interested in human injustices.

Way: I suppose people heard about my efforts and said, "Well, you can at least go to Senator Way and you'll get a sympathetic ear." So many times when you check into a situation when a constituent comes to you about poor little Joe or poor little Sam who's being discriminated against in prison, when you check the facts, you find out that the parents or the concerned relatives don't have the complete picture. So as I said earlier, I only recall really interfering or going to bat in about five cases, and I probably had hundreds come to me that I did nothing about because I felt that justice was being served. But injustice really concerns me. It always has.

Shearer: So your interest really began quite early, almost immediately upon election.

Way: Well, I guess that would be accurate, yes.

Shearer: Actually I'm curious as to how you did go to bat for them. What was the process by which you actually achieved parole for the artificial inseminator?

Way: In that particular case I just insisted that they have the hearings conducted by panels. In those days it was three, a panel of three members. I insisted that they have an en banc hearing. That means the whole board sits and considers this case. It was pretty difficult to get an en banc hearing. But I just kept hammering until they had one.

Finally, then, I think after the en banc hearing, they agreed to parole him, and he went down to the dairy.

Shearer: So essentially you made use of the procedures of the committee itself.

Way: Yes.

Shearer: You didn't exert extraordinary--

Way: No. But of course, if any legislator shows an interest in a case and stays with it, you carry some weight with the board.

Shearer: One of the things that has come up many times in my reading is the considerable attention, apparently, paid by the Adult Authority to public opinion in setting terms. There seemed to be a shift, as there would be more reports in the press, more expressions of concern and so forth so that the sentencing would become stricter.

Way: Yes, sure. Of course, these cases that I was keenly interested in and following never made the press. They were just--unpublicized incidents.

Serving as Senate President pro Tempore

Shearer: We're right up to the period now where you were going to make your move for the presidency of the senate pro tem. Do you want to describe that situation?

Way: Okay. This came about primarily because of the death of the late Senator George Miller from Contra Costa County. He was a power in the senate, chairman of the Senate Finance Committee, a long time, a very, very competent man. He died in 1968, and his successor then was Senator John Nejedly from Contra Costa County, and that gave the Republican party a majority in the senate, 21 to 19. Very close. So there were those among us who thought that, since we were the majority party, we should have the president pro tem spot. There were other Republicans who felt that Senator [Hugh] Burns, who had been pro tem for so many years, was more Republican than Democrat and we shouldn't make any change. So the thought and the process just stayed alive all during the latter part of '68 and into '69, for those of us who wanted to make a change for that reason.

There were those Democrats who wanted to make a change because they did not like the way the senate was being operated under Senator Burns. It was a closed process. Lobbyists did not have to spend much time worrying about the assembly, because when bills came to the senate they were referred largely to the Governmental Efficiency Committee, as it was called in those days. It was controlled by Senator Burns and the Rules Committee, and they--it wasn't any secret that the GE [Committee] met over at Posey's or one of the night spots the night before the meeting and decided what would happen to bills. There were no roll calls in committee. Nobody knew really how a senator voted if he didn't want them to know. So this process was one that many of us--Democrats and Republicans--found repugnant.

The meetings to plan the change in senate leadership in this period we're talking about now--late '68 and early '69--we were fond of saying that we had fifty secret meetings in those days,

Way: none of which were secret. But we caucused and we caucused and we caucused. We finally decided, after a good many caucuses, that I would be the candidate. And then, of course, the responsibility fell on me to get twenty-one votes.

Shearer: Who was it that convinced you to become a candidate? Who were people who--?

Way: It was the Republican caucus, largely. These caucuses of the Republicans considered several candidates: Senators Grunsky, Dolwig and other veterans. And by vote we finally settled on Senator Way.

So finally, then, in getting the twenty-one votes, I of course did not want to make this move unless it was successful. Because my supporters, if I wasn't successful, would be hung out to dry.

But finally I had twenty votes, and I thought I had twenty-one, but this one senator would not sign. I had twenty signatures on a sheet of paper that said at the top, "We the undersigned will vote for Senator Howard Way for President pro Tem of the Senate of the State of California." I had twenty, but I didn't have twenty-one, so I couldn't move, because I didn't want to--And I didn't want to call the caucus on this. Now, this is getting into May of 1969 now, so this had been going on for five months and it was interfering, certainly, with the functioning of the state. So finally the opposition, Senator Burns and his people, called the caucus because they thought--in effect they were calling our bluff--that we did not have twenty-one votes. We went in the caucus--secret ballot. The one person whom I was not sure of came through, so I was elected pro tem, twenty-one to nineteen.

Shearer: Who was the person?

Way: Oh, I can't say that.

Shearer: Not even now?

Way: Not even now, no. So then, of course, when we went on the floor, the vote was--it was not quite unanimous. One senator, as I recall, still couldn't go for Senator Way, but everybody else did. So that's a little background on that.

Shearer: I see. That explains your remark that it was not unanimous. Is it usually virtually unanimous, because everyone at that point then wants to get on the bandwagon--?

Way: Get on the bandwagon, sure.

Shearer: And not be shut out of committee assignments and so forth.

Way: Right.

Shearer: Why did you particularly want to be president?

Way: Oh, I didn't particularly want to be. I would have gone for Senator Grunsky. I would have gone for anyone that we could have agreed upon. But my name was thrown in, and of course I felt a duty, I guess you'd say.

Shearer: What did you hope to achieve?

Way: When we did it, even though I was only in as president pro tem for about nine or ten months--Let's see, I went in on May 13, 1969, and I was unseated on February 11, 1970. By the same vote, 21 to 19.

Shearer: Did the same person shift?

Way: [laughs]

Shearer: Or you don't know?

Way: No, you never know.

The things we did in that short period of time--of course, we got roll-call votes in the senate. We changed a great many procedures and rules to make the process more democratic. Those of us who were in on this refer to that period as Camelot, one brief shining hour. [laughter] But I think if you talk to people who have followed the legislature closely through the years, they will agree that we changed the senate.

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Shearer: [We were] just winding up discussion of the president pro tem struggle of '69 and '70. I wondered if you could be a little specific about some of the other reforms. You mentioned roll call.

Way: Roll call votes in the senate, yes.

Shearer: Were you able to do anything about the Governmental Efficiency Committee procedures?

Way: Well, those procedures were pretty well terminated, and as far as I know they haven't occurred since. But the minute you got roll-call vote, you see, individual senators were on the record, and their constituents could find out--as a matter of record--how they voted on every bill.

Shearer: I see. Why do you think that so many Democratic senators joined in with you?

Way: Oh, maybe we should touch on that. The twenty-one votes that I put together were thirteen Republicans and eight Democrats. The Democrats were the liberal Democrats, the environmentalists--I could name some of them, and I don't think they would mind--Senator Albert Rodda, who is no longer in the senate; Senator Nicholas Petris is still there; Senator Anthony Beilenson is now a congressman; Senator George Danielson is a congressman. They wanted a change. They did not like existing procedures. It was a bipartisan concern.

Shearer: They were also, for the most part, former assemblymen. Do you think that played a part--that they had a different set of expectations that they brought with them?

Way: Right, I'm glad you mentioned that, because the character of the senate changed after '66, you see, and reapportionment, when a great many of the senators who came into the senate came from the assembly. Of course, since then the senate has become much more partisan. Each party has a caucus now and they have a caucus chairman. I think you would have to say that that began, for good or bad, in 1966 with reapportionment.

Incidentally, I think a very strong case can be made here since 1966 for a unicameral legislature. But it probably will never happen.

Shearer: You're not working on that?

Way: Oh no.

Shearer: Sunday afternoons?

Way: [laughs] No, I'm retired!

Shearer: You said that the character of the senate changed as a result of reapportionment to one of more partisan character. I guess that means that seniority as a way of life--

Way: Was much less important.

Shearer: --Waned.

Way: Right.

Shearer: Did you experience, when your successor, Jack Schrade, came in, any punishment for having challenged--?

Way: No, not really. Let's see, the balance of the session, then, of the '70 session, I was not a committee chairman. I don't believe that I was on Finance Committee the balance of that 1970 year. But then in '71 I was again named--I was back as chairman of Agriculture and Water Committee, and I was back on Finance, I believe. One of the things that I really appreciated was that very early in my career in the senate I was named to the Senate Committee on Finance. I believe it was just my second year. This is where you find out how the senate and how the State of California operate, when you get on the Finance Committee in the senate and Ways and Means in the assembly. And I felt very fortunate to have had that opportunity so early.

Shearer: Yes, that's unusual.

Way: Well, it was a little unusual.

Shearer: How did that happen?

Way: I think it was because of Senator George Miller, really. I became acquainted with him, and he wanted me.

Medi-Cal Legislation in the 1960s

Shearer: Actually, this leads into a question on some of the proposals for cost-cutting and keeping a lid on Medi-Cal spending that surfaced in '69 and then, I gather, were picked up by the Reagan administration and put into some of the task force proposals that became the welfare reform package.

Way: Well, if we could go back just a little bit, you see, we implemented Medi-Cal in 1965. The bill was carried by then Assemblyman Jack Casey from Kern County. I'd only been there a couple of years, but I was on Finance by that time. And I opposed

Way: the bill, not because I opposed the concept, but my theory was, let's start with a Chevrolet and not a Cadillac, and let's be sure where we're going, and so on. And I remember a column written by the Los Angeles Times at that time, and it was headed "Country Boy Says 'Whoa!'" So I was the country boy who said, "Whoa."

So I guess you would say from that date on I was always sort of interested in social programs and medical programs and so on. Not, I hope, in a punitive way, but I wanted to be sure that they were controlled and that the expenditures were wisely made.

Shearer: Let's see, before you leave this I want to be sure that I ask this a little more precisely. Apparently the Medi-Cal legislation that you were dealing with at that point was directed not only at people who qualified for medical care because of essentially their poverty--that is, because they were on welfare and were therefore eligible--but also the medically needy, who were the middle class but who just couldn't afford a catastrophic illness and the terrible hospital bills. But there was this elasticity in eligibility, is that correct, that was troubling to people in the senate at that point?

Way: Yes.

Shearer: Was this because it seemed that the extent of application of the program was less predictable with this new [eligible] population being added?

Way: Yes. Well, we will move forward, because I went back to '63, and then coming forward into '66, '67, '68, this is when one of my staff--my chief staff person, really, was Dave Swoap, who probably was with me in '67, maybe as early as '66. He had been in the office of the legislative analyst (Alan Post) and then he was chief consultant to the Senate Welfare Committee in '65. So he probably came with me in '66. Because of his knowledge in welfare and his exposure in that area while in the legislative analyst's office, and also as consultant to the Senate Welfare Committee, he shared my concern over the fact that we had little or no control over runaway costs in these programs. Certainly you could call us fiscal conservatives.

I'm stopping here because I think people have a hard time putting me in any category. In some of the areas that we've been talking about earlier, I come on as being very liberal, but when it came to fiscal policy and being sure we were getting value for money spent, I was very conservative. I always have been. So I don't know, really, whether I'm a Republican or a Democrat. I think probably I'm a Libertarian. [laughter]

Shearer: Maybe humane.

Way: And then in those years, in '67, '68, and so on, we introduced a lot of legislation. I can't recall that we were very successful with much of it, but at least we thought we were pointing out to the people that we must control these programs or they will devour us.

Shearer: At the outset, I remember particularly in November '66, that Spencer Williams announced that there was going to be an eighty-million-dollar deficit in the Medi-Cal program. Apparently it was just six months after the program had been established in its then current form. People were very upset about that. Shortly after that--let's see, from November to August '67--he proposed cutbacks in service. But by November of '67, apparently they found the money, very shortly after the eighty-million-dollar deficit was announced. How did you, as a member of Senate Finance, respond to those dire projections and subsequent windfalls?

Way: Of course, we went along. I might have been a lone voice in the wilderness on some of it, but the votes were there. The Reagan administration had come in on January 1, 1967, and they were in control. We still had a Democratic majority in the senate. I'm not sure about the assembly; I don't remember. But there was a very good working relationship between the president pro tem, who was a Democrat (Senator Burns), and Governor Reagan. They enjoyed each other. And so Spencer Williams, and the fact that we had an eighty-million-dollar deficit--it was perhaps significant at the time, but after looking at it a little closer and listening to some of the bills maybe that I introduced, they decided that they could find the money.

Shearer: I'm just looking at a list of some of the events of '67, '68, and '70. The Supreme Court ruled against the state for having the cuts directed at the welfare segment of that eligible population first. The decision said that the medically needy (in quotes) ought to be restricted first before the welfare members of the population.

Way: I can recall just a few of my efforts. I wanted stricter relatives' responsibility for some of these programs, because I knew of specific instances where family income was substantial, and yet parents of those people were on Medi-Cal, getting state aid.

Way: And we just kept liberalizing our relatives' responsibility laws. In fact, I don't know where they are now, but they're practically nonexistent. People can be making a hundred thousand a year and their parents can be in a convalescent home or someplace being financed by the taxpayers. I didn't think it was right then; I still don't think it's right. But it goes on.

So my bills in that area were usually defeated in the first committee in the senate. And we felt that we were not being punitive or cruel or heartless, but we just wanted to get a little more control over the situation. And I would have to say that I think that subsequently with what's happened to Medi-Cal, and Medicare on the federal level, my predictions were pretty good, because all these programs are running--practically uncontrolled. They're going to devour us if we don't get control. But politically it is very difficult to do.

I would be opposed, for example, by all the old folks, and by--George McLain, who was very active in those years. He would bring in legions of people.

Shearer: The pensioners?

Way: Oh, everybody. And the blind and in wheelchairs. It's pretty difficult.

Shearer: How did you work, then, with Dave Swoap on these issues?

Way: Well, he was the architect. He had the knowledge. And he was a hard worker, putting these bills together, working--Of course, we tried to work with the administration. Swoap might not agree, but, in retrospect, it seems to me we really didn't have much success. We worked hard, but we were usually defeated.

Shearer: Did you say he came from public works?

Way: No, he came first from the legislative analyst's office. To go into his career right now briefly, after I was unseated as pro tem in 1970, he went over to the Personnel Board in 1972 and was the executive officer there for a year or so. Later on, he was a director of Social Welfare in the Reagan administration. When Jerry Brown came in in '74, Swoap of course was gone, and he went to Washington--on the staff of Senator Curtis, Republican senator from Kansas. And then most recently, before he came back to California, he was undersecretary of Health and Human Services in Washington, D.C. He is now the secretary of the Health and Welfare Agency in California.

- Shearer: Another person like that who comes to mind is Earl Brian, who sat in almost every tall chair I can think of.
- Way: I was trying to recall, but I've forgotten--for some reason or other in those days [1972 and 1973] he served as chairman of the Board of Corrections.
- Shearer: I know.
- Way: Oh, I know what that was. See, corrections were all in the Health and Welfare Agency, and as secretary of the agency, Brian served as chairman of the Board of Corrections. Now, when the new agency was created in January 1, 1980, I served as chairman of the Board of Corrections.
- Shearer: Did you have much to do with him?
- Way: Earl Brian?
- Shearer: Yes.
- Way: No. Very little. We dealt with--he's now in Washington, D.C., with the Reagan administration. What was his name? I can see him. He was under Brian as one of the directors of one of the departments over there, and he was our chief--
- Shearer: Carleson?
- Way: Carleson, yes. Bob Carleson. He was our administrative contact, worked very closely with Swoap on a lot of the--
- Shearer: But you don't have specific recollections of Earl Brian? He was kind of a man of mystery for a while because he came in at such a young age. He had had very little experience. He had a medical degree but he didn't practice.
- Way: Right. No, my only exposure to him was on the tennis court. He was a very good tennis player. [laughter] I'll use this word, and I don't think it's an unjust criticism--he was a gadfly. He was all over the lot. Very likable. Great personality. But lacking in administrative and managerial skills that would be required at that level. I think that would be a fair analysis.
- Shearer: All right. I don't want to lose track entirely of Mr. Spangler, whom you said would crop up later, in the later part of the story. I think we're at the point--we've been talking about penal reform and some of your early legislative efforts; is this where he comes in again now?

Way: He really doesn't come in again until I go over to the agency as a secretary, so we'll probably get to that. That's 1980.

III THE RONALD REAGAN YEARS

Penal Reform Legislation in the 1970s

Shearer: Let's see, you've told me how you became interested in the field of corrections, because you had a constituent with a real problem. Can you tell me a little bit about your service on the Select Committee on Penal Institutions?

Way: Yes. That committee was created about 1974, probably late in '74. Senator John Nejedly was the chairman; I was the vice chairman. We began a series of meetings in all of the penal institutions around the state. We would meet with the administration in the institutions, meet with the inmates, trying to decide what sort of reform we should come up with. We had a staff. It was chaired by a man by the name of Mike Salerno. As a matter of fact, I think Mr. Salerno is in the legislative counsel's office now, but I'm not sure. But anyway, we began these meetings and finally came up in 1975 with SB42, which proposed a determinate sentence approach. And Senator Nejedly was the author. I was coauthor.

Shearer: I think I may be confused. I have here listed the Select Committee on Penal Institutions as a senate committee--

Way: Right.

Shearer: --And coming in about 1972.

Way: Was it that early? Well, maybe you're right. Maybe we were a couple of years--preparing the bill. We thought we had lost the bill in the '74 session. But we got it revived over in the assembly. It became law July 1, 1976. So it was 1975 when we finally got it through, and it was '74 when we thought we'd lost it. So maybe as early as '72 we had framed it.

Shearer: That could very well be. I have information that in 1970 you were introducing senate bill 1402, and you had an idea of increasing the Adult Authority members from nine to twelve, and you would also set certain qualifications for their being able to serve. And this was introduced about the same time that AB 1511 by Assemblyman Craig Biddle was being put forward.

Way: What did it do?

Shearer: Biddle's bill was supposed to reduce--this is interesting--reduce the Adult Authority membership from nine to five, abolish the separate parole board for the women, require prisoners be paroled at the end of the minimum sentence unless specified reasons were given in writing, and require that the Adult Authority fix the length of the term soon after arrival in prison, subject to approval at a parole hearing at the end of the term.

Apparently AB 1511 was proposed in even more elaborate form, and over the period of 1970 most of these provisions were amended out, and by the time it passed--

Way: When did I introduce 1402?

Shearer: Bill 1402 was introduced in 1970. Maybe this is all in the dim past now, but--none of the other bills succeeded in reducing the membership of the AA or increasing it particularly. Why did you want to increase the membership? Did you hope to add on people from outside the field?

Way: I wanted to get more qualified people. And I don't remember the specific contents, but we spelled out definite qualifications. We wanted to get more people from the probation end, for example, and have a better balance. Almost everybody, as I recall, in those days had law enforcement backgrounds.

Shearer: And most of the reform legislation--from you and Senator Nejedly and Assemblyman Biddle and others--seemed to focus on the Adult Authority. Was this because they are the gatekeepers in the criminal justice process?

Way: Right.

Shearer: I guess we touched already on your view of the Adult Authority in the late '60s and early '70s. Is there anything you'd care to add to that?

Way: No, I don't think so.

Governor's Select Committee on Law Enforcement##

Shearer: This is a question on Governor Reagan's style. On other issues that were close to his heart, he made very effective use of citizens' advisory task forces, as a way of sort of molding public opinion, and, I guess, applying public pressure on the legislature. Did you find this to be the case in the prison reform legislation that you were involved in?

Way: No, I didn't. I don't remember that he had any task forces.

Shearer: There was something called the Governor's Select Committee on Law Enforcement Problems, which gave a report in August of 1973. They paid very close attention in the charge of this committee to the citizens' view of crime. They summarized their assessment of what they thought the public felt, which is that essentially criminals are not caught in great enough numbers.

Way: Yes, lock up more people.

Shearer: And those who are caught are not convicted in great enough numbers. And that the penalties are not tough enough. So the recommendations of the committee were to reorganize the criminal justice systems to create a public safety agency, which included the Highway Patrol, the military, all police units, the Youth Authority, the Adult Authority, and so forth. And then it had a list of specific points on how to beef up police organization, training of police, training of local communities, introducing new techniques and hardware, and so forth. Then the last two recommendations were: Use a gun, go to prison. That was the occasion for pushing that proposal. And to abolish the exclusionary rule.* I wondered if that Select Committee itself represented essentially a lobbying or a focus for molding or directing public pressure in the legislative process.

*Governing introduction of evidence, in which illegally obtained evidence would be excluded from criminal trials and, in some cases, might be grounds for reversal of convictions.

Way: Well, of course, it didn't, as far as--I think I can speak for Senator Nejedly. This was, of course, while we were thinking and framing our bill. I don't think that we paid too much attention to it. It was just an expression of something that we already knew, and that was that the public wants to be tougher on crime. And they are under the illusion that if they are tougher, it will reduce crime. But I would point out that right while all of those things were being suggested, and some of them were followed through, the crime rate continued to go up. So it isn't the answer.

Reorganization of Correctional Services##

Shearer: Staying in 1973, there was proposed at this time a reorganization of the state correctional services. It was announced apparently by Earl Brian, who was then secretary of Health and Welfare, Allen Breed of the Youth Authority, and Craig Biddle, and they announced it after eight months of what they called semi-secret discussions. The reorganization they proposed would send juvenile offenders to the county of origin, for the most part. (This is in '73.) They would institute a state revenue-sharing [plan] to pay from about seven thousand to twelve thousand dollars per juvenile to the county for housing. And then a 90 percent state subsidy would be provided for remodeling existing facilities. The idea, I guess, was to separate the youthful felons from the adult population and to merge the Youth Authority and the Department of Corrections under the Department of Corrections. And I guess the hope was to give some coordination to the system and also give the state the power to fix jail standards. Do you recall this major--it seemed to be fairly major--plan?

Way: Not--Was that 1973?

Shearer: This was '73.

Way: Did he introduce a bill? Do you have a bill number? It didn't happen. I can recall. You see, when the agency concept was established--I worked with Senator George Miller on that early on, when we created the four agencies. We didn't know what to do with Corrections and the Youth Authority, so we put it in the Health and Welfare Agency. So every year almost after that there was some sort of a movement afoot to get it out of there. Now, this is part of that. Because it really didn't belong there. But it

Way: wasn't until Governor Brown did this in 1978 and '79, and he created a new agency. He called it the Youth and Adult Correctional Agency, and he took all these parole boards and the Youth Authority and the Department of Corrections and put them in this new agency. Board of Corrections went in there, too. These efforts were going on repeatedly in those days. Allen Breed was a very effective director of the Youth Authority. Keeping juveniles in the home county was his concept, which was a good one. And I think it's been done to a degree, until they get into very serious trouble and are second and third offenders and involved in violent crimes. Then they come to one of our Youth Authority institutions.

Shearer: I wondered if this was an instance of diversion to alleviate overcrowding. At the press conference announcing this, apparently they indicated that there was some overcrowding in the Youth Authority facilities, although of course it wasn't the case nearly to the same extent as was true of the adult population.

Way: No.

Shearer: Was it mainly a winnowing of the--

Way: I think that basically it was a concept that Mr. Breed had that if you can keep these youthful offenders close to their homes and in their local areas, that they are better off than if they are sent to state institutions.

Shearer: They'd just do better?

Way: Sure. They'd do better. Family support in many cases is there in the local communities, far more than you realize. And that's important.

Views on the Death Penalty

Shearer: Did you become involved in death penalty legislation, or anti-death penalty legislation?

Way: No. I always supported the death penalty.

Shearer: My next question touches on penal reform and death penalty legislation and it addresses the philosophical emphasis and lobbying activities of the two attorneys general, Lynch and Younger. How did you view the role of the two attorneys general?

Way: I'm sort of surprised at your question. I hardly knew Lynch at all, and I don't recall who was the legislative liaison man. I think it was a man by the name of Charlie Barnett. Does that ring a bell?

Shearer: Charles Barrett?

Way: Yes. He was highly respected in the legislature, and he lobbied for Lynch, and then he lobbied for Younger, too. Younger had a policy, I know, that during a session, he would have little lunches for senators. In small groups he probably had every senator over for lunch. But it was just a get-acquainted thing. Maybe he did it with the assembly as well; I don't know.

Shearer: I mention it because on the death penalty issues he apparently was very active in supporting the initiative and use-a-gun-go-to-prison.

Way: Yes. Of course, he didn't need to spend any time with me on that, because my seatmate [George Deukmejian] was the author of the bill. Now Governor Deukmejian. I supported the Deukmejian bill on the death penalty for specific crimes: killing an officer and so on.

Shearer: Drug-related murder?

Way: Yes. Contract slayings and that sort of thing. And then I also supported use-a-gun-go-to-prison. So they didn't have to spend any time on me.

Shearer: How does that square with your other views?

Way: It's really sort of a paradox, isn't it?

It was strange, really, that Governor Brown, a liberal Democrat, would appoint me, a conservative Republican, to this-- first of all, to go over there and chair the Community Release Board, and then to name me secretary of this Youth and Adult Corrections Agency. And I've had many discussions with him on the death penalty. He, of course, opposed it, and I supported it. Again, I have to emphasize, for specific crimes--murder.

Your question is, "Well, how does this square?" Well, I guess it doesn't, really. I don't debate the death penalty issue, really, with my friends who are opposed to it. I understand where they come from. You can argue ad nauseum about whether it is a deterrent to crime. There are those who think it is. But I just think there are certain people who are going to be the habitual criminal, and I've seen a few of them, not very many, for whom I think there's no other answer. I guess I don't like to debate it-- [pause]

Way: Now it's become almost a pattern throughout the country to substitute for capital punishment life without possibility of parole. To me, this is cruel and inhuman, and I cannot envision how we would get anybody to run an institution that is filled with people who are serving life terms without the possibility of parole. There is absolutely no hope, no light at the end of the tunnel at all. They can kill guards, they can kill each other, and there's nothing going to happen to them. They're there for life. And I just think that that is no answer at all, and I noticed when I was--again I'm hazy on dates--when the State Supreme Court commuted life without possibility of parole sentences, which was found unconstitutional, to life with possibility of parole, those men on death row who had been behavior problems--the turnabout in their behavior was unbelievable.

Shearer: Really?!

Way: Because, you see, release might be way down the road, but there was some hope that someday they were going to get out. But when they were in there hopeless, with no prospects, what could you do with them? I used to wonder, who would we get to run the institutions?

Shearer: It's certainly a bleak prospect.

I'm just checking here the chronology on the death penalty to see--1970 Governor Reagan signed AB 1003--that's Assemblyman Biddle's bill--extending the death penalty to additional crimes. That's death for bombing and so forth. In '72 when Chief Justice Donald Wright announced the California Supreme Court decision against the constitutionality of the death penalty, that was when George Deukmejian proposed the constitutional amendment number thirteen to reinstate it.

That's when, apparently, Younger did not only some work before the court petitioning for a rehearing but also in the legislature. Was this something that you came to expect the attorney general to do, or was the extent of his participation unprecedented? Younger refers to it himself in his oral history as something that he felt he had done much more than his predecessor, that he had gotten out there and actually lobbied and encouraged development of legislation on environmental and consumer and law-enforcement issues. Was that your preception?

Way: I think so. I guess as I think back, probably his key person then was Charlie Barrett, perhaps, and also Michael Francetti was in. Francetti of course has made a lot of press recently. So yes, I think he probably was active in that.

III THE EDMUND G. BROWN, JUNIOR, ADMINISTRATION##

Determinate Sentencing Act of 1976--SB 42

Way: Should we lead into the structuring of SB 42, then, and these hearings in the prisons and why we arrived at the decisions we did make? [interviewer nods affirmation] In our conversations, particularly with inmates, we discovered such disparity in sentencing, and such arbitrary decisions. The parole board, for example, if the panel sitting didn't like the way an inmate's hair--if he had long hair--or if his skin was dark--they were very discriminatory in their actions. There was no uniformity. So this led us to the belief that we would be heading in the right direction if, when an inmate came to prison, he knew exactly how many years he was going to serve; that would be set by the judge. This would remove that uncertainty, that frustration that was so prevalent: How long am I going to be here? They just didn't know. A determinate sentence would relieve this uncertainty. We could see some real plusses there.

Additionally, in the bill, as I recall, we abolished the Women's Parole Board, didn't we?

Shearer: Yes. Why did you do that? You went across the state; you held hearings in every--

Way: Every one of the institutions, yes.

Shearer: Including the women's, all the women's institutions.

Way: Yes.

Shearer: Did you find different perceptions of abuses or different kinds of abuses in the women's prisons?

Way: No, I think--Most of the crimes that women commit--and I think it's still true today, although they are committing more violent crimes than they did then, fifteen years ago--most of them were nonviolent crimes. Percentagewise, we have very few women incarcerated. We still only have the one institution, and at last count--of course I'm out of touch now--but there were under a thousand women there, as compared to about thirty-eight thousand men now locked up, I think. So I think that basically our feeling there was that the workload could be handled by one board, and it was unnecessary to have that separate one. I don't recall that ERA or NOW or anybody was accusing us of being discriminatory against women.

Shearer: So the indeterminate sentence seemed to be, across the board of your hearings, the sticking--

Way: Yes. And we concluded that we should try determinate sentencing. So we did. And, of course, as we moved with this bill, it was very controversial; because our approach and the other provisions in the bill were opposed by the far right, because they thought determinate sentences were going to be shorter. We were opposed by the far left because they thought determinate sentences were going to be longer. And, of course, in the political arena, when you're hewing that course down the middle it's always toughest, because you're getting hit from both sides. So it was a long battle. And we finally got it out of the senate and got it over to the assembly, and there we thought we had lost it in the Assembly Criminal Justice Committee.

Shearer: Why was that? There was some speculation that the reason for the bottleneck was because someone on the committee had authored an alternate bill, and there was pride of authorship.

Way: Well, that often enters in. I don't remember the specifics, but I think one reason we did not get the bill out before they adjourned--and again, I'm sorry, I don't know if it was '74 or '75. Since the bill became effective July 1, '76, I'm thinking that it must have been the '75 session when we thought we'd lost it, and then we got it revived early in the '76 session. But the records would reveal that. But anyway, I think the key here was that Governor Jerry Brown, when we lost it, or thought we had lost it, in the assembly committee, was neutral at least. But during the recess before the next session, he agreed to support the bill, and that was what we needed to get it out of the assembly.

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Shearer: Apparently the police agencies and Evelle Younger supported SB 42 as of August 20, 1976. Then in June 1977, Younger testified in support of increases in sentencing as amendments to the bill. And that became assembly bill 476 by Daniel Boatwright. Is that--?

Way: Yes, you see, what happened after the bill became law on July 1, 1976, almost immediately the legislature began tampering with it. Assembly Bill 476 (Boatwright) increased terms and mandated sentences for certain crimes. And they continued to do that every year, which was very distressing to those of us who had pushed for the determinate sentence. And I think it would be fair to say that neither Senator Nejedly nor I anticipated that this would happen. As long as sentences and the punishment of crime is left in the hands of publicly elected officials, I think you're going to see this. I would go over and talk to my liberal former colleagues, Democrats--Senator Petris, for example, would be one--"Why did you vote for this bill?" Well, there was just one simple answer: "I want to stay in office, and this is what my constituents want." And this is a very, very dangerous precedent.

I will digress for just a minute. One solution, I believe, (and I would have pushed for it if I had stayed in public office) is a sentencing commission like the State of Minnesota has that takes this authority out of the hands of publicly elected legislators and puts it in the hands of a very prestigious committee of supreme court justices, appellate court judges, a representative of the attorney general's office, somebody from the DA's office, and somebody from public defender's office. They set guidelines and sentencing procedures.

What's happened here in California is that--and I have said this many times--we've just gone berserk in terms of punishment. My views are not shared by many, but I think the classic example is when the legislature a couple of years ago mandated prison for first-offense burglary.

Shearer: You mean in the instance where the offender was carrying a gun?

Way: No, no, he didn't have to. Burglary is not an armed offense; that's robbery if he's carrying a gun. No, an extreme example could be stealing a bicycle or entering a home and taking a stereo--that would mandate prison. This is one of the reasons our prison population has gone up so drastically.

This doesn't make a great deal of sense, but it's what's happening, so it's been a little discouraging.

Shearer: Where did these amendments leave SB 42? How close did you come to what you'd hoped to achieve?

Way: Oh, we came very close, I think. We took a few amendments in SB 42 to get support, but nothing that changed our goal, which was to have a determinate sentence that would tell a prisoner how much time he was going to serve and reduce the parole hearing load tremendously. You see, with determinate sentencing they didn't have a hearing. They served their time, got their good-time credit, came out, did their parole. Of course, the bill did not apply to capital crimes--murder, first-degree, or second-degree murder. Those people are still heard, and there's still quite a load for the Board of Prison Terms in that area. But the changes that have been made in sentencing practices and length of terms and so on, have been made with other bills. One of the first ones was AB 476 by Assemblyman Boatwright.

Shearer: And was his explanation similar?

Way: Oh, "let's be tougher." Yes. "These people are dangerous and they should be--"

Shearer: It seems to me that I've read that the median length of sentence increased during the time when the crime was increasing.

Way: Oh, I think that's true.

There is no body of evidence or no statistics at all that will substantiate the belief that the public generally holds, and that is if we lock people up for longer and longer periods of time, we're going to reduce the crime problem. It doesn't do it. And the costs are just astronomical.

Prison Crowding

Way: People find it hard to believe, but I think it was 1972 when Mr. Procunier said, "I'm going to show people that we do not need any change in the indeterminate sentencing law." They wanted to reduce the prison population; it was up. In 1972, the Reagan administration paroled about ten thousand. They reduced the prison population dramatically.

Shearer: Nineteen seventy-two?

Way: Nineteen seventy-two was the year, and I believe it was close to ten thousand inmates were paroled. Now, the public would think, of course, immediately we're going to see a big upsurge in the crime rate, when these dangerous people are running around. There was no discernible impact on the crime rate at all.

Shearer: What was the reason given for paroling?

Way: Just to reduce the population. And they could do it, you see. Now, with the determinate sentence, we don't have that elasticity. They're there for a certain time. That's one of the drawbacks.

Shearer: And yet they wanted to keep--They wanted to keep the prisoners in very much longer.

Way: Yes, but the orders came down from the governor: "Let's reduce this population." So they did.

Shearer: What was it, do you think, that tipped the balance for him in making that decision?

Way: Oh, I think it was just the fact that the prisons were overcrowded. The population was going up, and it needed to be reduced. Now, you see, the overcrowding situation is very, very critical, but there is no flexibility. There's no way they can release them early. Unless they change the law. Inmates are doing a determinate, a predetermined time. No parole board can say, "You can go out, Joe. We'll let you out early."

Shearer: What about the effects of diversion on this problem of overcrowding. Was diversion used to reduce the prison population?

Way: I'm not sure what you mean by diversion? Not sending them to prison?

Shearer: Well, I guess this would apply for the most part to youthful offenders who might be diverted to alternative--

Way: Probation--

Shearer: --Probation, or alternative work service, essentially--cleaning up the highways.

Way: Your question is, has that relieved overcrowding?

Shearer: Yes.

Way: It really hasn't much at all. Again, I think we should understand that I've been out of touch for a year and a half or more, so what I'm saying I think is still reasonably accurate. Overcrowding in the Youth Authority facilities is not critical. It's not nearly as critical. It is in Corrections, with the adults.

Because of changes and increased concern on crime, I think if you wanted to call probation diversion, the number of people on probation, I would guess, has probably declined. Because more of them are coming to prison. Judges have gotten tougher. They respond to public pressure, too, you see. I think it's a point we should make with the indeterminate sentence, we put discretion really in the hands of the judges. As you indicated earlier, there were certain guidelines. Depending upon circumstances of the crime and so on--they could choose a high level, they could hit a medium range, or a low range for a specific crime. So they had the discretion.

Erosion of Judicial Discretion

Way: Now what has really happened is that the discretion has been moved down to the district attorney. It really depends upon what he decides to prosecute on. Is he going to plea bargain? What can he do? I'm not sure that this is good, but that's what's going on.

You see, also in SB 42, we established a disparate sentencing review operation, which still functions. And it measures all these decisions in every court throughout the state for disparity. This was another reason for our determinate sentence, because a crime committed in, we'll say, Butte County, would get, let's say, ten years; with the same circumstances the same crime committed in San Francisco or Los Angeles might bring a fellow two years. They compare notes when they're in prison. This led to, of course, a lot of unrest and feelings of frustration. So this disparate sentencing review--and the judges opposed our bill, of course, originally. I don't think they ever came aboard really. They didn't want this disparate sentencing review operation. And yet, after it went into place and began to function, they liked it. It gave them a yardstick to compare their sentencing practices among all the counties.

Shearer: On the point of disparate sentencing, what happens, though, when the discretion is pushed back into the district attorney's hands on what to prosecute and whether to plea bargain? Let's say a man is charged with trespassing instead of trespassing with intent to commit whatever it was, which would be a much more serious crime and would require a greater sentence?

Way: I think what's happening is that this discretion really has been moved down to that level because the terms are spelled out specifically. It's going to be a determinate sentence, so the judges sit with the defense and the prosecution and say, "Well, let's see. Let's reduce this to second-degree." Or if it's robbery, first-degree, "Well, let's reduce it. Was he armed? What was the weapon?" So this goes on behind closed doors, really, you see. But to a degree it always has.

Shearer: But it does involve the judge?

Way: Well sure, but you see, what the judge used to do under the indeterminate sentence, and he still does in those states that have it, he has the best of all worlds. He can sentence an armed robber to five to ten years. Those who want a long sentence say, "Oh, that guy's got ten years." Those who want a short one say, "Oh, he's just going to do five." (Well, as a matter of fact, if it's five years with good behavior, he's going to be out in two and a half or three years.) So they like that. But now they don't have that, you see. They sentence for a specific term. Discretion left the bench and the judge and is down with the district attorney, because he really decides what he's going to prosecute and that's going to determine the length of the sentence.

Shearer: Yes. It's strange, with indeterminate sentencing the discretion theoretically rested with the judge and yet--

Way: It did.

Shearer: --And yet, wasn't it the Adult Authority that actually set the term?

Way: Eventually it was, sure. Eventually it was the parole board that really decided. And that's still true in lots of states. Texas, for example, is a classic example. They're one of the few states that lock up more people than we do. But their terms are much shorter, because the parole board has flexibility.

Shearer: A prisoner was quoted in the Friends Committee on Legislation Newsletter of April '75, who said--and this is not a complete quote; this is partly my scrawled paraphrase--that prisoners are still given the shaft by a prejudicial Adult Authority. This comment is in response to an announcement by Ray Procunier who, as chairman of the Adult Authority, said he would not oppose the determinate sentence, because he had "already established that policy by regulation." The prisoners say that that doesn't fool us because the AA always "pulls that kind of flim-flam when they get heat from the legislature." The speaker asserted that this happened in the early '60s, it had happened in 1971, and now it was happening again.

Did you observe a kind of cyclical response, tightening up on the standards?

Way: Sure, yes. Well, Procunier was--when did he make that statement? He wouldn't oppose a determinate sentence, but his position was, you don't need it because I--

Shearer: I've already done it. He said, "I've already given it." He established by regulation a procedure to give a firm release date within three months of arrival in prison. Which is certainly a shorter time than any proposed in the legislation I've read.

Way: Yes. But the inmates, you see, questioned that, the meaning of that word firm. Just how firm is it? It was by regulation; it wasn't in the law, but just a regulation in the Department of Corrections or in what was then the Adult Authority.

Shearer: From your observation, was Ray Procunier a man who carried through on such announcements?

Way: No, not particularly. No. Procunier was sort of a shoot-from-the-hip type, not a very good administrator. I could give many examples of a weakness in this area, and I think it's borne out by his career after he left. He's been hopping all over the country. He was in Virginia; he was in New Mexico; he was in Health for a while, you remember, under Jerome Lackner. He is now director of Corrections in Texas. So Ray has really jumped around. Very personable, very forceful, but a little bit erratic--I think that's the best word.

Shearer: He seemed to be successful in dealing with the press.

Way: Yes. Well, he was colorful. Oh, he was very colorful.

Shearer: Good copy?

Way: Oh, great copy. Of course at times it did him in, and then that's what happened.

Heading the Adult Authority and the Youth and Adult Correctional Agency##

Shearer: How is it that you were seated on the Adult Authority and then on the Board of Corrections?

Way: That I was seated?

Shearer: Yes. I mean, how did you come to serve?

Way: I announced in 1975 that I was not going to run again for the senate. I really wanted to retire. I had gotten acquainted with the staff of Governor Brown, Junior, who had been there [in office] just two years, '74 and '75, and particularly with his appointments secretary at that time, who is now an appellate court judge, Anthony Kline in San Francisco. Tony and I became good friends--
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Way: Tony Kline supported our SB 42, because he'd been interested in criminal justice and corrections for some time. So when I announced I was going to retire, Tony began to talk to me about going over and sitting on the Adult Authority. And I thought, well, here's a chance that doesn't come too often--to play a role in writing some legislation and then have a chance to implement it. So I said all right, I would. Well, when I agreed to do that, then, the governor said, "I want you to be chairman." Well, I thought this was a little ridiculous. I said, "Let me go over there and find out what's going on before you name me chairman." But no, it solved a political problem for him, I discovered later, to appoint me. So I finally agreed.

Shearer: What was the political problem?

Way: I think there were other people who wanted the job that he didn't particularly want, and to appoint a conservative Republican from the Bible belt was not going to hurt him politically, if you follow me. [laughter]

Shearer: Yes.

Way: And I think I fit that description. Then when he ran again in '78, and they accused him of being soft on crime, he could say--and he said this many times--"Well, I appointed former Senator Howard Way from Tulare County to chair, and he's not exactly soft on crime." [laughter] So that's how it happened really.

And that was a terrible name; I don't know how they ever settled on the Community Release Board, because it created the impression with the public right away that we were releasing everybody. And then also we got mail repeatedly addressed to the Community Relief Board. [laughter] They thought it was a welfare operation. So we immediately changed that, or tried to, right away, to the Board of Prison Terms, which is a little more descriptive of what the function is.

Shearer: How long did you serve on that?

Way: I served four years. Then I became agency secretary in '80, and I served then as agency secretary in '80, '81, and '82. Three years as agency secretary and four on the board.

The Youth and Adult Correctional Agency was created and went into effect January 1, 1980. That's when we finally resolved the problem of Y-A-C-A [spells]. (We should have been able to get a better name for that.) I served in that capacity in '80, '81, and '82.

Shearer: How did you see your role in shaping the agency's policies then? Were you able to do what you--?

Way: Oh, we did a lot of things. We shook a lot of trees.

Shearer: Tell--

Way: Well, I suppose the real blockbuster was naming a black woman [Ruth Rushen] to be director of the Department of Corrections.

Shearer: That's a blockbuster, yes.

Way: That was something. I believe there might have been one other woman who briefly had been a director of corrections in a state, but I'm not sure. But certainly we were plowing new ground when we named a black woman to be director of the Department of Corrections. In my estimation she was outstanding. I had become acquainted with Ruth Rushen because she was on the Board of Prison Terms. Shortly after I became chairman, I made her vice-chairman of the board, within a year or two, because she had tremendous administrative and managerial abilities. She was color-blind. She had been an

Way: executive in probation in Los Angeles County for many years and managed some seven thousand employees at one time. So that was a very interesting period, when we wanted to replace director Jerry Enomoto with Ruth Rushen. You'll recall we had lots of press. Mr. Enomoto did not take his replacement in a very diplomatic way and caused quite a few waves.

Corruption in Prisons

Way: That really brought a new approach to corrections, in a way.

Corrections departments in every state that I am aware of are a very incestuous group. We have third-generation people who are correctional officers in California institutions. Their father was a correctional officer, their grandfather. And this can lead to a very narrow view. There is an old adage--I think I should say this--that I find to be very true, and that is that incarceration not only corrupts the kept, it corrupts the keeper. It is widespread, not only in California, but in most of our states--if you stop and think for a moment, you can see why it happens. The atmosphere of a prison is so sordid, so inhumane. The abuse is unbelievable. The sexual abuse.

If you are incarcerated--take San Quentin, for example, with I don't know how many men they have over there now, maybe five thousand. If you took nonviolent, normal men (the average age is twenty-six or twenty-seven) and put them in those cages, you would have trouble in no time at all, just from the confinement. And then when you think of the type of people you have in there, it's indescribable. And the public by and large does not want to know what goes on in those institutions. Out of sight, out of mind. And they don't know. So as a result, there is no scrutiny on practices. It is a very, very sad situation.

We made a lot of changes with superintendents and wardens. Mrs. Rushen was tough. I think at last count before we left, we had probably changed administrations in at least eight of the twelve adult institutions because of mismanagement and so on. You see, there's so much money involved in drugs that most any inmate you talk to will tell you that he can get drugs inside the institution almost as readily as outside. We made some progress in preventing this. I don't think there's much use in talking about this. The situation is there and it continues, and the public's not too interested in what's going on.

Shearer: You mentioned the word cages, not cells.

Way: Well, they're six by six by nine with two men.

Shearer: So they're cages.

Way: Yes.

Shearer: I was not so fully aware of the dimensions of a cell and the zoo-like atmosphere until I toured Alcatraz years ago. It was pretty horrifying, and of course there were no prisoners there. There was nothing to see except the building. I'm sure most people don't want to think about it. It's just too shocking.

Way: It really is.

Thoughts on Reform

Shearer: Is there a better way?

Way: Well, there are several things we could do. But you cannot sell it to the public. I've said this up and down the state all the time I was in office, the same speech over and over, to Rotary Clubs, to anybody that would listen. There are about 20 percent to 22 percent of the people that we have locked up in prison doing time that shouldn't be there. They are nonviolent people. They've never carried a gun or a weapon. They've never hurt anybody. They're the check writers, the Mickey Mouse burglars, the car thieves, and so on. And yet the legislature has mandated that they come to prison. There's a terrible cost, not only in dollars but in human values.

I used to say that five years in San Quentin is a postgraduate course in crime. They come out worse than when they went in. So we're making criminals, really, out of some of these people. So let's don't send those nonviolent people there. Keep them in their home communities. Have a probation and parole system where if they're employed they can keep their jobs. They can continue to support their families. (You see, when you lock up the breadwinner, you've created a welfare situation.) So we should do that. But it doesn't sell.

And then we should take the sentencing practices out of the hands of publicly elected officials and put it in the hands of a commission, as I mentioned Minnesota's doing.

Way: Then we should have, and they must do this--don't get me started--an early release program. If a man has done five, six, seven, eight, ten years of good time and he's coming out on his determinate sentence, say sixty or ninety days from now, what's the harm in letting him out now? He'll be on parole, be closely supervised, and they could cut down this overcrowding just like that. Many states are doing that now. Some of the so-called hardcore states: Carolinas, Georgia, Michigan. But we tried to get the bill through. We've tried two or three years now, and we can't do it here in California.

Those are at least three or four things we could do immediately to relieve the overcrowding, which contributes to the behavior patterns and the sordid atmosphere in the joints.

Shearer: This early release would go into effect two thirds or three-quarters of the way through the time served if the man was obviously ready, or just a little bit before the end of the sentence?

Way: Oh, it could be much more than that. Just shorten a sentence by sixty days and I forget how many thousand would come out, but it would relieve overcrowding. And they would be carefully selected, carefully screened. They would have to have served good time, no behavior problems. They'd have to have employment. And they'd have to have family support. It's there for lots of these people.

Shearer: I'm sure it's a very difficult thing to do.

Way: Yes. I decided that it was a no-win situation. I was kind of happy to be put out to pasture.

Shearer: Did you decide you didn't want to continue?

Way: Yes. I told the governor, my good friend, to get someone else. I'm almost seventy-one, and one of the bills I carried years ago specified that anybody over seventy should not be appointed to serve on appointed boards. Now, if people want to elect them, okay. I was aiming at the Metropolitan Water District Board in southern California. The average age was eighty-two. The chairman was ninety and coming in a wheelchair. Anyway, the bill didn't go very far, but I thought I'd better practice what I'd preached.

Shearer: Aside from the women's board and the Adult Authority, what other board in the criminal justice system exerts the same degree of control on sentencing and parole? Is there something that we've not mentioned?

Way: We might mention the Youthful Offender Parole Board, which really determines how long those juveniles stay in. It's still indeterminate, you see.

Shearer: I see. And there were not the complaints registered against this?

Way: No.

Shearer: Why is that?

Way: I don't know. I think basically it's because the terms are pretty short. The average length of stay in the Youth Authority--at least a couple of years ago--is just about nine or ten months.

Shearer: And that's because they're essentially less troubling crimes, as well as the age?

Way: Yes.

Shearer: So they don't have time to develop the degree of frustration that the hardcore--?

Way: Right.

Shearer: Do you want to take a minute and give some overview at this point of what you think your efforts at prison reform have brought in terms of determinate sentencing and combined boards, due process, and prisoners' rights?

Way: Okay. I think it's important when we look at this from a historical aspect that we have really gone full circle here in California. Years ago we had a determinate sentence. We went to the indeterminate. And now we're back on the determinate. And now there's a good deal of pressure to reverse this again because of some of the factors we've talked about, the inflexibility of the determinate sentence, the inability to control population pressures as we could with the indeterminate. So the cycle goes. California leads, of course, in so many areas, and we have led in penal reform, and as we went to a determinate sentence, many states have followed us now since 1976. If we could control the actions of our publicly elected officials who get into this area, I still think that a determinate sentence is a right approach. But until we can do that, I can see that there are going to be a great many pitfalls.

Another point I wanted to make here. [pause] There is also, of course, progress as we build new prisons, in California and in most of our states. We're eliminating the bastille-type institutions,

Way: the tier cells that are five stories high. We're going more to a modern, not over two- or three-story buildings that I think will lead to a better atmosphere in the prisons. Hopefully. It's a little bit difficult to get modern thinking among our correctional officers and the people who run these institutions. They still want lots of barbed wire with gun towers and the whole bit. With modern electronic surveillance you really don't need gun towers anymore, but they're part of tradition. And in our new institutions, at least, I lost that battle. I said, "Let's at least reduce the number of gun towers," but we had to give in on that. And the cost, of course, of manning those around the clock twenty-four hours a day--in the dead of night with everybody locked up in their cell--We still have people in those gun towers. An electronic fence with an alarm can do all that.

So we're making some progress in designing more humane prisons, but it's slow.

Shearer: Where was the opposition registered on that battle to eliminate gun towers?

Way: From the correctional officers. They're organized now; they have a union, and they're very strong. And up until the time that Mrs. Rushen was named director, and until I went over there, every director in the history of the state of California had come up through the correctional ranks.

Shearer: So this was a really significant departure.

Way: It really was, and of course it didn't last very long. The director now is the former superintendent down at San Luis Obispo, Mr. Dan McCarthy. So that's what you run into. The people who design the prisons would be in agreement with me that you don't need those towers from a security standpoint. But the argument is made that the public feels better if they see those towers. And then razor wire is the going thing now. In fact, there was an article today, they're putting razor wire around one of the prisons.

Shearer: I don't know what that is.

Way: Those coils of wire. Razor wire goes on everything now. We should get in the business!

Shearer: I see.

Way: I keep digressing. I gave you an overview there.

More on Determinate Sentencing

Shearer: I come back to determinate sentencing again, because it's so--

Way: Controversial.

Shearer: Well, it's--It's sticky. You can't really let go of it. And I guess early release might be a way of adjusting the determinate sentence to give some degree of flexibility.

Way: Right. That would be the first step. I think that eventually they will see that they have to get rid of this inflexible element that is built in. But again, you see, as we said earlier, there are pluses and minuses there.

I used to have--and I still have--some real reservations on the efficacy of parole. I think you could probably just send these people--again, the nonviolent people--back into the community with just no parole at all. Because the parole caseload is so high that actual supervision is very superficial. Usually the parole agent asks his people to come by and check with him. It's really--

Shearer: I see, the burden is supposed to be on him to go and check on them.

Way: He's supposed to check, but the caseload is so heavy that he just can't do it.

Shearer: The problem seems to be still with us--too many prisoners inside and not enough money to supervise them outside.

Way: Yes. We haven't discussed that cost at all, you see, but it's just mindboggling.

Shearer: I know. I think I remember that in 1974 it was between seven and twelve thousand dollars a year to keep an inmate.

Way: Oh, it's closer to fifteen now per inmate, and they're approaching a population of forty thousand prisoners. There are projections that by 1990 we will have over fifty thousand. This is '84. And they're approaching it, because they're over or around thirty-eight, thirty-nine now.

Shearer: I know one thing that we haven't really talked about. Are prisons intended to rehabilitate or to punish, or a mixture of the two? At the time when you proposed determinate sentencing, how did you--?

Way: We spelled it out in the bill. We had to do it to get the support we needed. The chief purpose of incarceration is punishment. It states that right in the bill.

But I think it did not mean that we de-emphasized rehabilitation. We have a lot of rehabilitation programs. Any inmate can further his education. He can learn--trades are sort of outmoded--but we did not lessen our emphasis on rehabilitation even though that statement was there. Just the confinement is punishment. Loss of freedom.

Shearer: Yes. But was that statement included because you felt it reflected the facts, or was it in order to--?

Way: To get certain support that we had to have from tough punitive types in the legislature.

Effect of Population Age on Crime Rate

Way: I think again, maybe it was just a broad view, what really affects crime rates more than our punishment techniques, certainly, is the high crime rate for males between the ages of nineteen and twenty-five. And as our population, the baby boom, as they move in and we have a higher percentage of our population in that age bracket, crime goes up. As they move on through this age bracket, I think probably we're going to see the crime rate coming down now, because that baby boom has passed through. And there are some indications it is coming down. But this is what really affects crime rates. It isn't the fact that we decide to lock up everybody--Because the percentage of crimes committed that are actually, first of all, reported, then prosecuted, and then sentenced, is extremely small. Amazingly small. The case may be dismissed, the DA might decide not to prosecute, they could get probation instead of coming to jail, or they go to trial and the case is lost. You know, these are things that the public really is not aware of. So that's why when, in 1972, they paroled ten thousand prisoners, there was not any great increase in the crime rate, because we catch so few of them anyway.

Shearer: That's amazing.

Way: And I used to laughingly refer to the first offender. I used to say there's no such thing as a first offender. It's just the first time he'd been caught.

Shearer: Well, that leaves some very wide open questions on the whole notion of deterrence and--

Way: It certainly does, doesn't it? I wish we had some answers.

Shearer: Ray Procunier had some provocative ideas, too. We've covered some of them. At one point he said that he thought the Adult Authority was being a little harsh, unnecessarily strict, and that the reason for that was they thought that's what Governor Reagan wanted. But they had very little opportunity to speak with him or hear him say anything. So he said, "Well, I," speaking of himself, "got them together with the governor, who set them straight." Do you recall this development?

Way: No.

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I think historically governors have influenced board members because they are appointed by the governor. This was one area where, for example, in the agency, when I was secretary, I really had to be tactful. There was a rather fine line as to how much authority I had over those individual members of these paroling boards, because they were gubernatorial appointees for a term. I tried as judiciously as possible to exercise some supervision in terms of day-to-day procedures and being sure that they were on time at hearings and this sort of thing. But when it came down to their decisions on whether to deny parole, for example, in cases that were getting a lot of publicity--and maybe we'd better get this in a historical document, because the Fain case* is one that's going to go down in history, certainly--governors have historically really exerted some influence in those cases, because I think it's just the structure that they are gubernatorial appointees and he can have some influence on them.

*William A. (Archie) Fain served 15 years in prison for the murder of a 17-year-old woman and the raping of three others in 1967. He was to have been released on parole from San Quentin on September 8, 1982. He was denied parole on January 19 of that year by the Board of Prison Terms, after relatives of the victims submitted petitions to the Board bearing 62,500 signatures. The state Court of Appeal ruled subsequently that public outcry was not a sufficient reason to deny him parole. Prison officials had called Fain "a model prisoner." SF Chronicle Sept 3, 1982, p. 6, col. 3.

Members of the Community Release Board

Shearer: What we did not talk about were individual members of the board. We said that Henry Kerr served over the years.

Way: Yes. I don't know how long, but he was there.

Shearer: Were you closely enough acquainted with the Adult Authority to know who held sway, other than Mr. Spangler? Was there one or two or a coalition of people who kind of dominated the proceedings?

Way: No, I couldn't say before I went over there.

Shearer: How was it when you were there and when you were agency secretary?

Way: Well, of course, I was chairman of the board when I got there, when I went over there, so--Some of the members of the board were stronger than others. It was well balanced. Of course, a strong person through the years has been Ray Brown, who has now been appointed head of the National Institute of Corrections by President Reagan.

Shearer: Now, his background is certainly in the correction field.

Way: Ray Brown?

Shearer: Yes.

Way: Oh yes. He was deputy police chief in Oakland. Yes, he's had a law enforcement background.

Shearer: And does it come to the fore when he's acting as a board member?

Way: Yes. You would classify him as being one of the tough ones. But very fair. Some of the inmates used to object to having him on a board because maybe they had been involved in Oakland crime when he was assistant police chief there, and they felt that he couldn't be objective. But they found out that he was.

I'm just looking at this Community Release Board membership when I first went over there in 1978. Ray Brown certainly was one of the strong members, and Ruth Rushen was. And another outstanding member for years was Ralph [L.] Pizarro, who came from probation work down in the Central Valley. So I think some of them stand out more than others, but the panels that sit on the individual cases are composed of two board members and one hearing representative, and so you rotate them. They're on the road five days a week.

Shearer: I see. And a hearing representative is--

Way: They're civil service. They are a very prestigious group. There are about thirty-five of them or so.

Shearer: How did you feel about the board that you chaired, and the board that you subsequently--?

Way: Well, I felt that it was a balanced board in terms of race. There were blacks. This board had two black women, two Chicanos and had an Armenian during 1977 and 1979.

Shearer: How about by professional background or perspective?

Way: Law enforcement, probation, the courts, the judicial, a public defender--Tony Radillo now works in the public defender's office.

Shearer: As secretary did you have input into their selection?

Way: Yes.

Shearer: So would it be accurate to say you hand-picked the board?

Way: No. And I mention this as a source of pride, but Ralph Pizarro was one of my boys, as they say, because I had watched him perform in Tulare County for many years.

Shearer: He was the--?

Way: He was on the Board of Prison Terms for many years. I believe now he is a hearing representative. This is the way they go. After they've served on these boards, many of them, because that is security, you see. It's a civil service job. I think, yes, the governor [Edmund G. Brown, Jr.] would always check with me. And I really had veto power. But we didn't have any problems agreeing usually. On these people.

Shearer: How about individual cases? Any clashes that were really difficult?

Way: Yes. Because I feel very strongly, regardless of who the governor is, that he should not get involved in these hearings, and yet Governor Jerry Brown did. I don't know whether Governor Deukmejian has or not. Governor Reagan, I don't believe did. But in the Onion Field cases, Governor Brown really didn't want those people paroled, and let the board know that he didn't. He wrote them a letter urging that parole be denied. I think that that is a little hazardous politically. You appoint the board, you'd better let them make the decisions and take the heat.

Shearer: Did you make your views known to him?

Way: I made my views known, but I didn't prevail. That happened to me quite a bit during my career! What do they say? To survive long in politics, you have to have the hide of a rhinoceros.
[laughter]

Shearer: Ray Procunier said that conservatives can be freer to do more than liberals, in prison reform at least, because a conservative is not so likely to be accused of being soft. Do you feel that's the case?

Way: That's probably true, sure, because no one wants anybody to be soft on crime, you know. That's the kiss of death. That's why so many of my liberal colleagues, when I would approach them on why they were casting some of those votes for harsh penalties, they would reply, "Just not to be labeled soft on crime." And they can just take one vote, you know, on one obscure bill, and say, "Look, he's soft on crime."

Let's get this in the record. I think it's been interesting to watch the transformation of former Los Angeles Police Chief Ed Davis since he's come to the senate. Ed Davis opposed us in our determinate sentencing bill. I can still remember his testimony, and it made headlines, that on July 1, 1976, we were going to release five thousand dangerous criminals, violent criminals, to prey on the innocent women and children of California. They'd be loose on the streets. And he testified repeatedly in opposition to the bill. So because of his testimony, on July 1, 1976, the media were all up at Folsom waiting for this wave of violent criminals to come out. One old inmate came out who had been incarcerated for years. He couldn't have hurt a flea. He was the only one that came out.

But Ed has now become a very moderate man in these areas. He has--

Shearer: Really?

Way: Well, he voted for the AB 1, the homosexual bill,* the other day. He was one of two or three Republicans who voted for that. The former Police Chief of Los Angeles.

*Ed Davis joined the majority of 22 to 16 voting in favor of the job rights bill (2/16/84) prohibiting employers with more than five employees from discriminating against homosexuals.

Shearer: That is remarkable.

Way: So these transformations happen once in a while, and I think it's something that historically we at least ought to watch.

Ed Davis is enjoying this. And he's gained a great deal of respect in the senate. People thought he was going to be a far-right rigid type, and he's proving to be a statesman. Let's put this in the record; maybe it'll come to pass. He has ambitions to be United State Senator, or run for governor down the road.

Shearer: How old a man is he?

Way: Well, he's not young. He's early sixties. That age is probably going to be a little handicap. But he's a far cry from the Los Angeles Police Chief who in solving the student unrest problem said, "Shoot 'em at the airport."

Shearer: Isn't that something!

Why would Jesse Unruh have opposed your presidency of the senate?

Way: If I said at that time that he did, it could be, but his opposition certainly wasn't very active. But it could have been that he was very comfortable with the arrangement with Senator Burns as pro tem, because the assembly and Jesse pretty well dominated the media. The "Hugh and Jesse Show" was one that was going on then. Hugh Burns and Jesse Unruh had weekly press and media conferences, and Jesse could dominate those.

Prison Construction

Shearer: I think I have asked you almost everything. [pauses to look through notes]

I was going to ask about the proposals to build more prisons. This was in 1980. When we were talking about possible solutions to overcrowding, do you think that building more prisons is in that range of possibilities?

Way: That's the route they're taking. We had a bond issue passed that raised almost a billion dollars for new prisons. Then there is money going for increased jail construction. County jails are in

Way: terrible condition around the state. So the public wants to build more prisons, and they will. The cost, again, is unbelievable. Well, we need new prisons to replace San Quentin and Folsom, because at any time some federal judge is going to say those places have to be abandoned because they do not meet fire and safety standards. And they're inhumane. Consistently my position was that we need new prisons, but we need them, not with the prospect of locking up more and more people, but just to replace antiquated facilities that we have at the present time. We haven't built a new prison in California for over thirty years. So it must be done. Again, let's don't view these new prisons as just more capacity to lock up more and more people, because it won't solve the problem.

Shearer: There was a bill by Senator Presley, SB 1340, in 1980, which envisioned replacing San Quentin with a psychiatric and medical facility, and then adding two maximum security prisons at Tehachapi. Was this the point at which you were pushing for humane architecture and absence of gun towers?

Way: Yes.

Shearer: And it was specifically directed at this proposal?

Way: At Tehachapi. We broke ground at Tehachapi in 1982, and the completion date at that time was 1985. I see they're already behind schedule. But in designing those prisons, I would like to have said, "Let's at least reduce the number of gun towers." As far as I was concerned, let's just eliminate them and have electronic surveillance for perimeter security. But I lost the battle. So there will be gun towers at Tehachapi.

There are prisons planned, one for a San Diego site. We need more capacity in southern California. About 75 percent of our inmates come from south of the Tahachapis, and most of the capacity is in northern California.

Interestingly enough, Los Angeles County has never had a prison. And they send, of course, a high percentage of the inmates.

Then there is a site at Alpaugh--that's in Kings County. And also there is a site that I believe has been acquired--it's been very controversial--in San Bernardino County. So this will increase capacity down south.

Way: Most people feel that it is important to have the inmate incarcerated close to his home, which then encourages family visitation and a continuing contact with families.

Shearer: I should think that would mean more and smaller prisons.

Way: Right. Yes, that's another thing we didn't mention. None of these new facilities will have a capacity of over four or five hundred. That would be maximum. They will be smaller units. Tehachapi--

Shearer: That's like a college dormitory?

Way: Yes.

Shearer: In size only.

Way: Yes. Of course, we were accused of designing palaces for the inmates.

Shearer: I should think it would have an impact on the jailers as well, though, if they have more pleasant surroundings.

Way: Oh sure.

Shearer: It must work that way.

Thank you very much. It's been a great pleasure

[Interview 2: November 13, 1984]##

Controversy over Replacing Jerry Enomoto

Shearer: First focusing on the replacement of Jerry [J.] Enomoto, can you give a little bit of background on the controversy?

Way: Well, Mr. Enomoto had been director of Corrections for a few years when we created the agency on January 1, 1980. I had known Mr. Enomoto for some time. His biggest job previous to his appointment as director by Governor Jerry Brown was superintendent of the Men's Institute at Tehachapi. He had spent a lifetime; his whole career had been in the Department of Corrections. I felt after watching his performance and meeting with him and getting around to all the prisons and seeing the operation, I felt that Jerry was not a strong administrator.

Shearer: This is Jerry Enomoto?

Way: Jerry Enomoto, yes. [During his tenure] every prison, for better or for worse, was its own little fiefdom and being run by its own rules that were local for that particular spot. Each superintendent and warden was pretty much on his own. So I felt that we needed stronger central management and administration emanating from the director's office in Sacramento. And Jerry just could not bring this about.

Shearer: Was that because he had been in the position of being the local--

Way: Yes, I think so. I would have to say, I think the reason he was appointed, frankly, by Governor Jerry Brown was because he met the need for placing a member of a minority race in a key position, which Governor Jerry Brown was very interested in doing. There were other superintendents and wardens, in my estimation, who were better qualified to be the director of the entire department than Jerry Enomoto.

Shearer: What was the appointment process followed in his case, as nearly as you can remember?

Way: Well, Jerry lacked a little professionalism in that when Governor Jerry Brown and I had several meetings on this and finally decided that we needed to replace him, Jerry did not go gracefully. There was a good deal of turmoil among the Asian community in California. Some of them maintained that the reason he had been relieved was racial and so on, which of course was not true at all. There was a good deal of publicity--a lot of press at this time. And then when we named Ruth Rushen, a black woman who had been on the Board of Prison Terms to succeed him, this created some more problems statewide.

Shearer: How so?

Way: Well, Mrs. Rushen had to be confirmed by the Senate Rules Committee. And she was opposed very vigorously when this came about by certain Asian groups in California. One in particular (I can't remember the name of it) was based in San Francisco. Members of those groups testified against Ruth. This opposition was brought about by the fact that Mr. Enomoto did not leave in a professional manner.

Shearer: Can you pinpoint the chronology a little bit? He was appointed before you were on the agency?

Way: Yes. The agency was created and I took over as secretary in January 1, 1980. Mr. Enomoto had been serving then as director of Corrections for several years.

Shearer: Was there a particular issue that moved you to consider removing him? Did you initiate the suggestion that he be removed?

Way: Yes. I think the thought originated with me because of what I had observed, the areas of weakness that I mentioned previously.

Shearer: Was it a matter of not being able to exert discipline?

Way: If you just look at the elements in good management and administration--and that is central authority, ability to make the tough decisions, demanding and getting the respect of your fellow workers and the wardens and superintendents. Take those three elements of good management and administration alone, and he was lacking in these three. And I could see this.

Shearer: How would you compare him with Ray Procunier?

Way: Oh, entirely different. Procunier was forceful and, as I said in our earlier interview, he tended to shoot from the hip. Jerry Enomoto was very soft-spoken, gentlemanly. I had known him for many years while I was in the senate and he was in the Department of Corrections. They were quite different.

Shearer: Did he enjoy the respect in his particular institution? On a smaller scale, was he able to exert the kind of management initiative to do the proper job?

Way: I think so. I think when he was, as near as I could find out, superintendent at the institute in Tehachapi, he was effective. But that was a very limited span of control, you see. One institution. A few hundred employees. Suddenly, here he was. He was faced with a tremendous span of control, thousands of employees, a tremendous budget, responsibility to run and manage twelve institutions. This was too much for him.

Shearer: Why do you think he resisted his reassignment?

Way: I think he was listening to some bad advice, perhaps from some of his peers, that somehow or other he should not take this removal lying down. But what he didn't understand, and I hope he does now, was that he was serving at the pleasure of the governor. And when you are in those positions, those high level positions, you must understand this. If the governor decides he wants to make a change, that's the name of the game. You go gracefully and thank him for the experience that you had.

Appointing Ruth Rushen as Director of Corrections

Shearer: Now shifting to Mrs. Rushen, did most of the opposition to her appointment come from supporters of Mr. Enomoto who felt he had been unfairly removed?

Way: I think that was a good portion of the opposition. Another area of opposition which was very strong--very vocal--was the California correctional officers. They have an association known as the CCOPA, California Correctional Officers and Parole Association. They objected, I think, primarily for two things. First, she was a woman, and it was history making to name a woman head of the Department of Corrections. And I think because she was black there were probably some racial overtones to it.

Shearer: So it was the interest groups within the department that constituted a significant block of opposition?

Way: Yes.

Shearer: What about in the senate? Was it difficult to get her confirmed?

Way: The hearing was before the Senate Rules Committee. As I recall, finally it was a unanimous approval, five to zero. And on the senate floor there was not much trouble.

Shearer: And so the parole officers and correctional officers did not testify against her?

Way: They did before senate rules.

Shearer: So there was overt opposition.

Way: Yes. In all positions where you have to have confirmation by the senate, the real hearing is held before the Senate Rules Committee. That's where the witnesses appear and the testimony is taken in detail.

Shearer: So it was really won there and from that point on she didn't have to face significant opposition?

Way: Once she was sworn in as director, no.

Shearer: How did she do in the position?

Way: Well, I suppose you would get mixed reviews depending upon to whom you asked that question. I think it's important that we understand as we look back and look forward, that Corrections in California has been run almost since its inception by people who come up through the ranks--the good old boy network. Directors prior to Ruth Rushen had been either wardens or superintendents in the system. So if you ask them now, I think they would say, "Well, Ruth Rushen was only here for a short time. And we got along with her, but she didn't have much impact."

But as far as I'm concerned, I was never disappointed in her performance. She did those things that I expected her to do. She had had broad administrative and managerial experience in Los Angeles in the probation department. She understood management. She understood how to delegate. And she made a lot of changes in wardens and superintendents in the system while she was there. So you ask me about her performance, I think it was very good.

Shearer: Did she make these changes in personnel with your advice and consent?

Way: Of course we worked very closely together. But she was the one. It was her responsibility to run the department. My theory of management is to delegate. Set goals and objectives and find the people to carry them out.

Shearer: Was there a general trend or drift in philosophy that she followed in the personnel changes that she made? What kinds of replacements?

Way: Well, yes, I think so. We found that there were a lot of very weak administrators in warden and superintendent positions. They had been elevated into those positions maybe because they had just been on the scene for many years. Inefficiencies and just lack of performance--Let's see. The question was, "Was there any underlying philosophy?" No; I think none other than that we wanted management, we wanted responsiveness, and we wanted accountability for what was going on in the institutions.

Shearer: Was there an attempt on her part or on your part to open up the warden positions to minority people?

Way: I suppose there was a feeling. And maybe that was one of the bases for the opposition to her appointment, the fear that she would be favoring blacks over white, or maybe Chicanos over whites. But this was one area where Mrs. Rushen had tremendous courage. She

Way: removed and replaced blacks as well as whites and Chicanos. She was just looking for performance. I often said it, and I say it now: she was color blind. She just wanted people who were competent and prepared to do the job. So she had to make some tough decisions that alienated her in some areas of the black community because there were blacks who were demoted and removed.

Shearer: You said, in describing the possible reaction of people who were not fans of Mrs. Rushen that she was just there a short time and had little impact. Why was her time so short? Or was it just short in relation to the total history of the Department of Corrections?

Way: Well, let's see. I went in as agency secretary in January 1, 1980, and then probably within six months or so later, she was named the director. And then with the election of '82, when we had a new governor, we just assumed we would be gone. So I think there was a feeling on the part of the, we'll say, the good old boys, the old guard, "Look, we'll go along with these people. We'll give them lip service on what they're trying to do, But they aren't going to be here very long." And that's what happened.

Shearer: Was there any opposition from the public that you remember, except the sort of special public, the Asians and supporters of Mr. Enomoto?

Way: Well, yes, you would have to call them public. I don't recall any other.

Shearer: What steps did you take to deal with the opposition, specifically?

Way: At that time, I had been gone from the senate about four years, but many of my former colleagues were there. And Mrs. Rushen made it a point to get around and meet individually with these people. Once they met with her, they were pretty convinced that she was a person who could do the job. That's about all we did.

Shearer: Where did she go after that?

Way: She is now on Attorney General Van de Kamp's staff, and handles his contacts with the minority population in Los Angeles. She's doing very well.

Shearer: But she is not herself an attorney.

Way: No.

Shearer: Her background is all in probation?

Way: Probation and parole.

Reconsidering the Determinate Sentence

Shearer: I'd like to just go on now to the Determinate Sentencing Act of 1976, which you were instrumental in creating. You mentioned that you now have some reservations about the efficacy and the fairness of the determinate sentencing, in part because of the subsequent amendments that lengthened prison terms and reduced the discretion of judges. What did you see in the day-to-day administration of the act that changed your mind about the desirability of the determinate sentence?

Way: I haven't changed my mind completely. I still think that absent some of the changes that were made after we adopted the bill, that a determinant sentencing approach is still the best. But what happened, and we covered that earlier in our previous interview, was the legislature saw fit to act almost immediately, with a series of bills to lengthen terms and mandate sentences for certain crimes. And then of course, this created a problem, I think, with the Deukmejian administration, in that they don't have the flexibility that they had under the indeterminant sentence to control prison population because these people are coming in for a definite term, set by the judge. They have no parole hearing. They serve their time and they come out. That's for all noncapital crimes.

So with the flexibility gone, it creates a problem. There are several things they could do. One is to have a pre-release program whereby certain carefully selected inmates, non-violent ones, who have done their time, maybe three, four, five years, release them sixty or ninety days early, and they could reduce the population pressure which gets worse every day. So this lack of flexibility might be termed an element that we didn't anticipate. Maybe some people did. I didn't. But I see it now.

Still, when you look at the pluses and minuses of an indeterminant sentence versus a determinant, you see under the indeterminant sentence the great disparity that existed in the terms and sentences that were being served by the inmates, and the uncertainty as to when they are going to come out and how long they are going to be in. I would still say that a determinant sentence is the best approach.

While I see these weaknesses--you indicate I might have changed my mind--I haven't yet.

Shearer: Would it be accurate to say that you feel that the potential for abuse is, on balance, much greater with an indeterminant sentence?

Way: That's very true. I remember the arbitrary decisions that were made through the years by the old parole board, lots of injustice.

Controversial Cases before the Adult Authority

Shearer: What did you face as the stickiest issue on a case or a prisoner during your tenure as head of the YACA, and chairman of the AA?

Way: I think I would have to say it was probably the attention and the publicity that was brought to certain famous cases that were before the parole board, cases such as Sirhan Sirhan, the famous Fain case, and the Onion Field killers. Because of the great publicity surrounding these cases, and it's really amazing, in the Sirhan Sirhan case--Oh, and another one I didn't mention was Charles Manson, of course. When they were set for a hearing, we would have communications not only from all over the United States, but we would have them from foreign countries, particularly on Charles Manson. The publicity that surrounds these cases makes an objective judgment very, very difficult.

I don't think that Charles Manson should be paroled. I don't want to indicate that he should. Sirhan Sirhan, there's a possibility there, depending on where he is sent. The Onion Field killers, one has been paroled. I think he has come back to prison. The other one has not been paroled.

I feel that the governor, no matter who he is, should not get involved in these cases. The governors appoint a paroling authority, and they should let them act. I disagreed with Governor Jerry Brown in this area. In spite of my objections, he wrote a letter to the parole board saying, "Do not parole certain people." I think Governor Deukmejian has publicly said that certain people shouldn't be paroled. That's his prerogative. It's a very, very difficult problem. And I suppose as long as we're human, parole boards are going to respond to this public pressure. That's probably one of the most, if not the most, difficult issue I had. Of course, I disagreed with Jerry Brown in that area.

Shearer: When? You disagreed with him on his--

Way: Interference, in effect, by writing letters urging them that they be kept in prison.

Shearer: But you in fact agreed with his judgment in that they should not be paroled?

Way: I would agree in the case of Sirhan Sirhan. But I thought that probably we could have arranged for Sirhan Sirhan to go back to Jordan and not continue to board and room him for the rest of his life. I'd be in favor of something like that. In the case of Charles Manson, he hasn't given any indication that he's ready to come out into society. One of the Onion Field killers, of course, was paroled. And they've done a lot of time. They've done twenty some years incarcerated. And his record in prison has been exemplary. I would tend to think that perhaps he could be paroled.* I just can't generalize beyond certain specific cases.

Shearer: How did you deal with the governor's action, or did you?

Way: No. I just expressed my concern and my advice was given to him for what it was worth. I always had access to the governor. And of course the cabinet met once a week. He was very supportive really.

Shearer: Did he use you ever as a lightning rod--taking the heat for making an unpopular decision? I guess in order for you to have served that purpose you would have had to have some distance from the governor's position. It sounds as though if you were expressing his wishes in your actions as agency secretary and chairman of the Adult Authority. Perhaps you were standing too close to serve as a lightning rod for making an unpopular decision.

Way: I don't quite understand that. I very studiously avoided any contacts with a panel on parole on these people. I felt that they should make the judgment. I didn't want to pressure them to keep somebody in or let somebody out. They might know how I felt, because at times I served on these panels myself. But I just didn't make any suggestions. Of course, he used me in his campaigning in 1980. That fact that he had appointed a conservative Republican, of course, to this very sensitive spot was something that he used, politically, which didn't bother me.

*Gregory Ulas Powell, one of two men convicted of killing two Los Angeles Police Department officers in an onion field in 1963, had his parole withdrawn in 1982. A subsequent ruling by the state Court of Appeal in January 1984 ordered Powell's release, stating that the Board of Prison Terms had used "impermissible evidence" in reaching their decision. SF Chronicle, Jan 10, 1984.

Way: But as a matter of fact--we may have mentioned this earlier, in the years that I served with him and watched him--he did almost a complete turnaround from being what we might call a moderate liberal in the area of corrections into a hardcore, pretty tough law-and-order sort. He signed those bills, you see, that lengthened terms and mandated sentences for specific crimes. I used to say to him facetiously when he was going this route, that he was a "born-again" crime fighter.

Shearer: If you had to draw the line now on your corrections philosophy--yours as opposed to former governor Jerry Brown's--would you say that yours is a little more liberal than his at this point?

Way: Oh, yes. I would say at this point it is.

Shearer: How do you account for that?

Way: Well, I think it's largely political. When my liberal colleagues and friends in the senate and the assembly were voting for these very, very tough law-and-order bills that were so punitive, I would ask them, "I can't understand why you're doing this." And their answer was, "Look, we want to be reelected, and our constituents want us to be tough on crime." And I can understand it. It's the trend of the times right now, I think. People somehow or other believe, and I've said this before, that if they lock up enough people, they are going to solve the crime problem. But history shows that it won't.

Shearer: What about other members of the Brown cabinet? Were there any who gave you trouble?

Way: No. Of course, I was the only Republican, token Republican, as they referred to me. No, we didn't. Our relationships were cordial.

Recollections of Governor Brown

Shearer: Did your relations with Jerry Brown, or your opinion of him change over the course of serving in his administration?

Way: Well, they changed in this area, certainly, that we just talked about. No, I don't think so.

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Way: Most anybody that knew him and worked with him as closely as we did in the cabinet knew that, from an administrative and management standpoint, he was not organized. The word, I think, is mercurial; he was apt to make quick decisions. Delegation and an orderly process that leads to a studied, deliberate decision was pretty rare. But the state survived and it was a very interesting experience.

Shearer: Did you participate in any of these marathon policy sessions?

Way: Oh, yes.

Shearer: How did they work?

Way: They were very disorganized sessions because he loved to just expound his theories. And sometimes in some of the areas where I worked, he loved to practice at being a prosecuting attorney or a defense attorney and would get into almost a court scene. Oh yes, we had several of those.

Shearer: Did he listen to you?

Way: I think so. I think he sort of regarded me more or less as a father figure. I was the age of or older than his father. I had served with and knew Pat Brown very well. So I think just the age differential, if nothing else, created a certain respect that he had for me.

Shearer: Who else among the cabinet members counted in these sessions? Whose voice was most clearly heard?

Way: [pause] Probably one of the most influential was Lynn Schenk, who was in the Business and Transportation and Housing Agency. Another fairly strong one was Alice Lytle, who headed Consumer Services. There were many people in the cabinet meetings on a regular basis who really didn't have cabinet status. But they did a lot of talking. Cabinet meetings were not very well organized.

Shearer: Who were the people who were not of cabinet status but were included nonetheless?

Way: I'm trying to think. I'm pretty sure that Rusty Schweiker did not have cabinet status. There was a Hispanic woman who was--I've forgotten what her title was, but she ended up on the personnel

Way: board. And she was usually there and she was very vocal. There were others, but my memory is failing me. Cabinet sessions were presided over almost all the time by Gray Davis. And then later in the last month or so of the administration by--

Shearer: The Frenchman?

Way: No, the war hero.

Shearer: I know who you mean. I can see his face.

Way: Yes, everybody knows him.

Shearer: B.T. Collins. Head of the California Conservation Corps.

Way: Yes. Oh, he was so colorful. After he took over, the cabinet meetings were organized and well-structured. We would go in and out in a couple of hours.

Shearer: Was the governor not present at that time?

Way: No, he was hardly ever there.

Shearer: But under Gray Davis, they were extended and rambling?

Way: Rambling. Yes, we would go in theoretically at eleven o'clock and take a sack lunch. And it could be any time, three or four o'clock before we were out, It would be just sort of a roundtable discussion on a lot of issues, taking up my time in a lot of areas where I had no authority and very little interest. I should have been at my desk taking care of the daily decisions.

Shearer: And was the governor present in those sessions?

Way: No.

Shearer: How were agendas developed?

Way: [laughs]

Shearer: On the spot?

Way: Just practically, yes. There was no set agenda, no position papers, no description of the problem and then proceeding to make a decision. No, there were very few decisions made.

Shearer: If you had a problem to bring up, would you put something on paper and try to get it reviewed ahead of time or--?

Way: No, if I had a problem, I would probably just go verbally to Gray or the governor ahead of time. There was no request for written positions or written information so that the proper decision could be expedited. It was quite a contrast to the Reagan administration where there was a set agenda. I didn't attend very many cabinet meetings then, but I did some. Position papers were presented. The issue was thrown out on the table. Of course, the meetings were restricted to just cabinet members and staff. So you had a feeling of orderliness and some organization.

When B.T. Collins came into the position in the last few months, things were much better organized. And B.T. was a Republican.

Shearer: And he departed even further from the fold.

Well, I think that covers my additional questions. Thank you very much.

[End of Interview]

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TAPE GUIDE -- Howard K. Way

Interview 1: March 22, 1984	1
tape 1, side A	1
tape 1, side B	14
insert from tape 2, side B [3/22/84]	24
tape 2, side A	25
insert from tape 1, side B [3/22/84]	29
resume tape 2, side A	30
segment tape 2, side A	37
tape 2, side B	37
tape 3, side A [side B not recorded]	46
 Interview 2: November 13, 1984	 52
tape 4, side A	52
tape 4, side B	61

INDEX -- Howard K. Way

- Adult Authority, 1, 7-12, 23, 29,
35-38, 41, 46-47, 59-60. See also
Board of Prison terms and
Community Release Board
agriculture, 2, 6-7
Alcatraz Federal Prison, 40
assembly, 30-31
Assembly Committee on Ways and Means,
16
- Barrett, Charles, 27-28
Beilenson, Anthony C., 15
Biddle, Craig 23-25, 28
Blosser, Eleanor Way, 2
Board of Corrections, 20
Board of Prison Terms, 1, 7, 10, 32,
38, 48-49, 53, 60. See also
Adult Authority and
Community Release Board
Boatwright, Daniel, 31-32
Breed, Allen F., 25-26
Brian, Earl, Jr., 20, 25
Brown, Edmund G., Jr. (Jerry), 9, 19,
27, 29, 37-38, 41, 48-49, 52-53,
59-64
Brown, Edmund G., Sr. (Pat), 5
Brown, Raymond, 47
Burns, Hugh, 12-13, 18, 50
Business and Transportation Agency,
62
- California Correctional Institution,
Tehachapi, 51-52, 54
California Correctional Officers and
Parole Association, 55
Carleson, Robert, 20
Collins, B.T., 63-64
- Community Release Board, 1, 38, 47-48.
See also Adult Authority and
Board of Prison Terms
Consumer Services, Office of, 62
corrections, 1, 7-12, 22-24, 26-61
Corrections, Department of, 9, 25-26,
36, 38, 52-57
criminal justice, 1, 7-12, 23-24,
26-46, 49
- Danielson, George, 15
Davis, Ed, 49-50
Davis, Gray, 63-64
Davis, Herbert, 5
death penalty, 26-28
determinate sentence, 32-36, 40-46, 58
Determinate Sentencing Act of 1976
(Senate Bill 42), 22, 29-32,
34-36, 42-44, 49, 58
Deuel Vocational Institution, 7
Deukmejian, George, 27, 48
Dolwig, Richard, 13
- elections, 1962, 4-5
elections, 1966, 5, 15
elections, 1968, 5
Enomoto, Jiro (Jerry) J., 39, 52-55
Erecca, John (Chuck), 5
Exeter (CA), 2
- Fain, William A., 46, 59
Folsom, California State Prison at,
51
Francetti, Michael, 28
Friends Committee on Legislation, 36

*Unless otherwise noted, departments and agencies listed are units of California state government.

Governor's Select Committee on Law
Enforcement, 24
Grunsky, Donald, 13-14

Health and Welfare Agency, 25
Highway Patrol, 24

Kerr, Henry, 8, 47
Kline, Anthony, 37
Knight, Goodwin, 4
Kuchel, Thomas, 4

Legislative Analyst, 17, 19
legislature, 15-20, 27, 30-31
Lynch, Thomas, 26-27
Lytle, Alice, 62

McCarthy, Dan, 43
McLain, George, 19
Manson, Charles, 59-60
Medi-Cal
costs, 16-18
eligibility, 17-18
reform, 19
Medicare, 19
Miller, George, 12, 16, 25

National Institute of Corrections, 47
Nejedly, John, 12, 22, 25, 31

onion field case (Gregory Ulas Powell),
59-60

Petris, Nicholas, 15, 31
Pizarro, Ralph L., 47-48
Post, A. Alan, 17
Presley, Robert B., 51
Procunier, Raymond K., 9, 32, 36-37,
46, 49, 54

Radillo, Tony, 48
Reagan, Ronald, as governor, 18,
24-25, 28, 32-33, 46, 48, 64
Reagan, Ronald, as president, 20, 47
reapportionment 1966, 15
reorganization, state government, 25
Rodda, Albert, 15
Rushen, Ruth, 38-39, 43, 47, 53,
55-58

Salerno, Mike, 22
San Quentin, California State Prison at,
39-40, 50
Schenk, Lynn, 62
Schrade, Jack, 6, 16
Schweiker, Rusty, 62
senate, 4, 5-6, 8, 12-20, 22-23,
30-31, 50, 55
Senate Committee on Agriculture, 6, 16
Senate Committee on Finance, 16, 18
Senate Committee on Governmental
Efficiency, 12, 14
Senate Committee on Rules, 55
Senate Committee on Water, 6, 16
Senate Committee on Welfare, 17
Senate Select Committee on Penal
Institutions, 22
Sirhan, Sirhan, 59-60
Social Welfare, Department of, 19
Spangler, Joe, 8-10, 47
Supreme Court, 28
Swoap, Dave, 17, 19-20

task forces, 24
Tulare County, 5
Tulare County Fair Board, 4

University of California, Berkeley, 2
Unruh, Jesse, 50

Van de Kamp, John, 57

Warren, Earl, 4
Way, Barbara Chandler (Mrs. Howard),
3, 5-6
Way, Florence, 2, 4
Way, Haven, 2, 4
Way, Haven Maxwell, 2
Way, Stephen, 3
Way, Susan, 3
Williams, Howard, 5
Williams, Spencer, 18
Women's Parole Board, 29-30, 41
Wright, Donald, 28

Younger, Evelle J., 26-28, 31
Youth and Adult Correctional Agency,
26, 37-38, 59
Youth Authority, 24-26, 42
Youthful Offender Parole Board, 42

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